REPORT

OF THE

FIFTH ANNUAL MEETING

OF THE

STATE BAR ASSOCIATION

OF INDIANA

Held at Indianapolis, February 4, 1901

PUBLISHED
BY ORDER OF THE ASSOCIATION
1901

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ARTICLES OF ASSOCIATION

OF THE

STATE BAR ASSOCIATION OF INDIANA

I. The name of this association shall be "The State Bar Association of Indiana."

II. The objects of this association shall be: To advance the science of jurisprudence, promote the administration of justice, uphold the honor of the profession of the law, and encourage social intercourse among the members of the bar of the state of Indiana.

III. Any person shall be eligible to membership in this association who shall be a member in good standing of the bar of the state of Indiana.

IV. There shall be elected by ballot annually the following officers of this association:

A president, a vice-president, a secretary and a treasurer.

The following committees shall be annually appointed by the president for the year ensuing:

On jurisprudence and law reform, consisting of thirteen members, one from each congressional district.

On judicial administration and remedial procedure, consisting of thirteen persons, one from each congressional district.

On legal education and admission to the bar, consisting of thirteen persons, one from each congressional district.

On publication, consisting of thirteen persons, one from each congressional district.

On grievances, consisting of thirteen persons, one from each congressional district.

On admission of members to the association, consisting of one person from each judicial circuit of the state.

A committee of three, of whom the secretary shall always be one, shall be annually appointed by the president, whose duty it shall be to report to the next meeting of the association the names of all persons who shall have died during the year, with appropriate notice of the deceased.

There shall also be an executive committee, consisting of the president, the secretary, the treasurer (all of whom shall be *ex officio* members), together with four other persons to be annually chosen by the association. The president shall be chairman of the executive committee. The executive committee shall select the persons to make addresses and read papers at the next annual meeting of the association, and fix the time and place of the annual meeting of the association, and have charge of its business and prudential affairs.

There shall also be such special committees appointed by the president or selected by the association as may be deemed necessary.

A majority of those members of any committee, including the executive committee, who may be present at any meeting of the committee, shall constitute a quorum of such committee for the purpose of such meeting.

V. All nominations for membership of the association shall be made in writing to the committee on membership; the latter committee shall, by ballot, determine the fitness of all persons presented; when such committee has approved of a name presented, it shall report such person to the association, who shall thereupon become a member: *Provided, however,* That if any member of the association demand a vote upon any name thus presented, the association shall vote thereon by ballot, and five negative votes shall be sufficient to reject such person.

VI. By-laws may be adopted at any annual meeting of the association by a majority vote of those present. It shall be the duty of

the executive committee first chosen, without delay, to frame suitable by-laws, which shall be in force until rescinded by the association.

VII. Each member of the association shall pay five dollars to the treasurer as annual dues, and no person shall exercise any privilege of membership who is in default. The time of payment and mode of enforcing the same shall be provided for by the by-laws.

VIII. The president of the association shall open each annual meeting with an address.

IX. The association shall meet annually at such time and place as the executive committee shall select, and those present at such meeting shall constitute a quorum.

X. All the persons signing and acknowledging these articles, and all the persons duly elected to membership of the association, shall become members upon the payment of the annual dues for the current year.

BY-LAWS

OF THE

STATE BAR ASSOCIATION OF INDIANA

PRESIDING OFFICERS.

I. At all the meetings of the association the president, or in his absence the vice-president, or in the absence of both of these any member chosen by the association, shall preside.

ORDER OF BUSINESS.

II. At each annual meeting of the association the order of business shall be as follows:

1. Address by the president of the association.
2. Annual address.
3. Reading minutes of preceding meeting.
4. Report of executive committee.
5. Report of treasurer.
6. Report of committee on jurisprudence and law reform.
7. Report of committee on judicial administration and remedial procedure.
8. Report of committee on legal education and admission to the bar.
9. Report of committee on publication.
10. Report of committee on grievances.
11. Report of committee on admission of members of association.

12. Election of members.
13. Report of committee on obituary notices.
14. Report of special committees.
15. Miscellaneous business.
16. Reading papers.

The order of business may be changed by a vote of a majority of the members present.

The usual parliamentary rules and orders shall govern the meetings of the association except in cases otherwise provided for by the constitution or by-laws.

SECRETARY.

III. The secretary shall keep a record of the proceedings of all meetings of the association, the proceedings of the executive committee, and of all matters of which a record shall be ordered by the association. He shall notify the officers and members of committees of their election or appointment, shall issue notices of all meetings, and in case of special meetings shall add a brief note of the object of the same.

He shall furnish the treasurer the names of all persons newly elected to membership.

He shall be keeper of the seal of the association.

THE TREASURER.

IV. The treasurer shall keep at all times a complete roll of the members, and shall notify new members of their election. He shall collect, and, under the direction of the executive committee, disburse all funds of the association, and keep an account in books belonging to the association of the receipts and expenditures of moneys. At the annual meeting of the association he shall make a report of the receipts and disbursements of the association, together with any suggestions he may think proper to be made.

THE EXECUTIVE COMMITTEE.

V. The executive committee shall meet before each annual meeting, and at such other times as the chairman of the committee shall indicate by call. This committee shall report at each annual meeting its doings, and make such suggestions to the association as, in its opinion, require the action of the association.

COMMITTEE ON ADMISSIONS.

VI. The proceedings of the committee on admissions shall be secret and confidential. They shall report at each annual meeting the names of those recommended for membership. This committee shall meet the day before each annual meeting, and at such other time or times as they may be called together by the chairman.

DUES FROM APPLICANTS FOR MEMBERSHIP.

VII. When the committee on admission of members has approved the name of an applicant for membership in the association, the treasurer shall promptly notify such person of the action of the committee; and such person shall, upon this notice, remit to the treasurer five dollars as annual dues for the current year. If the association at its next annual meeting rejects such candidate, the treasurer shall refund said sum.

ANNUAL DUES.

VIII. The annual dues shall be payable at the annual meeting, in advance. If any member neglects to pay them for any year at or before the next annual meeting, he shall cease to be a member. The treasurer shall give notice of this by-law within sixty days after each meeting to all members in default.

OTHER STANDING COMMITTEES.

IX. Each of the other standing committees shall meet on call of the chairman of the same.

COMMITTEE ON GRIEVANCES.

(As amended July 10, 1900.)

X. Whenever any complaint shall be preferred against a member of the association for misconduct in his relations to the association, or in his profession, the person or persons preferring such complaint shall present the same to the committee on grievances, in writing, subscribed by the complaining party, plainly stating the matter complained of.

If the committee is of opinion that the matters therein alleged are of sufficient importance, it shall cause a copy of the complaint, together with a notice of not less than thirty days, of the time and place where the committee shall meet for the consideration thereof, to be served upon the member complained of, either personally or by leaving the same at his place of business during office hours, properly addressed to him; and it shall cause a similar notice to be served on the party presenting the complaint. At the time and place appointed, or at such other time as may be named by the committee, the member complained of may file a written answer or defense, and the committee shall proceed to the consideration of the case upon such complaint and answer, or upon the complaint alone if no answer is interposed.

The complainant and the member complained of shall each be allowed to appear personally and by counsel, who must be members of the association, and shall produce their witnesses. The witnesses shall vouch for the truth of their statements on their word of honor. The committee may summon witnesses, and, if such witnesses are members of the association, a neglect or refusal to appear may be reported to the association for its action.

Before the trial shall commence, the member complained of may object peremptorily to any one or more of the committee, not exceeding three; and the places of those objected to shall be supplied, for the purposes of trial, by appointment by a majority of the remaining members of the committee who are in attendance.

The committee, of whom at least seven must be present at the trial, except that a less number may adjourn from time to time, shall hear and decide the case thus submitted to them and shall determine all questions of evidence.

If it finds the complaint, or any material part of it, to be true, it shall so report to the next annual meeting of the association, with its recommendation as to the action to be taken thereon, and if requested by either party, may, in its discretion, also report the evidence taken or any designated part thereof.

The association shall thereupon proceed to take such action on said report as it may see fit: *Provided, however,* That no member shall be expelled unless by the vote of two-thirds of the members present and voting.

Whenever specific charges of fraud, or gross unprofessional conduct, shall be made in writing to the association by a reputable person against a member of the bar not a member of the association, or against a person pretending to be an attorney, practicing in this state, said charges may be investigated by the committee on grievances; and if, in any such case, said committee shall report in writing to the executive committee that, in its opinion, the case is such as requires further investigation or prosecution in the courts, the executive committee may appoint one or more members of the association to act as prosecutor, whose duty it shall be to conduct the further investigation or the prosecution of such offender, under the instructions and control of the committee on grievances.

Whenever any complaint shall be made in writing to the association concerning any other grievance touching the practice of law or the administration of justice, the committee on grievances shall

make such preliminary investigation into the same as it may deem necessary in order to determine whether it is expedient that any further action shall be taken thereon. Should such further action be, in its opinion, expedient, the committee shall report in writing to the executive committee that, in its opinion, the charge or charges are of such a character as to require further investigation. Thereupon the executive committee may direct such further investigation by the committee on grievances, or otherwise, as it may deem most suitable to the case. Upon the termination of such investigation, a report thereon shall be made to the executive committee, and if the said committee shall find the complaint, or any material part of it, to be of such a nature as to require action by the association, it shall so report to the association, with its recommendation as to the action to be taken thereon, and it may also report the evidence taken, or any part thereof.

The reasonable disbursements of the committee on grievances for expenses incurred in any trial, prosecution or investigation may be paid out of the funds of the association under the direction of the executive committee.

All the foregoing proceedings shall be secret, except as their publication is hereinbefore provided for, unless otherwise ordered by the association by a two-thirds vote.

XI. Terms of officers shall begin on the day following the adjournment of the annual meeting at which they are elected.

XII. These by-laws may be amended at any annual meeting of the association by a vote of two-thirds of those present.

TRANSACTIONS

OF

THE FIFTH ANNUAL MEETING

OF

THE STATE BAR ASSOCIATION

OF INDIANA

HELD AT INDIANAPOLIS, FEBRUARY 4, 1901

MORNING SESSION.

MONDAY, February 4, 1901.

The meeting was held in Plymouth Church, and was called to order by the president, Edwin P. Hammond.

THE PRESIDENT: I have the pleasure of announcing the opening of the fifth annual session of the Indiana State Bar Association. First on the programme is the address of the president.

EVIDENCE

ADDRESS BY THE PRESIDENT, E. P. HAMMOND.

The subject of my address, "Evidence," may suggest that I will attempt an epitome of Greenleaf or Starkie. This is far from my purpose. I desire to present some views on the duties of trial judges, and what I consider ought to be the duty of appellate courts, in reviewing the evidence on motions for new trial and on appeal.

I admit in advance that the name of my theme is not happily chosen, but, in my limited vocabulary, I could find no other single word which suited me better.

Facts are established by evidence. Certain facts are presumed from the existence of other facts, but the facts from which the existence of others are presumed depend upon evidence. The competency of witnesses and the admissibility of evidence are regulated by statute and the common law. The probative force of evidence, however, is left largely to the sound discretion and judgment of the tribunal vested with authority to decide the issue upon which the evidence is admitted.

A mistake in deciding whether the facts in issue have or have not been proved may be attended with serious consequences to parties, and it is an error which, of all others, is most difficult to correct on appeal. An error by the trial court in ruling upon a demurrer to a pleading, in deciding which party has the open and close, in permitting an incompetent, or refusing a competent witness to testify, in admitting improper or rejecting proper evidence, in giving, refusing, or modifying an instruction, can easily be rectified on appeal. But where there is no error in these respects, where the rulings on the pleadings are correct, all proper and no incompetent evidence permitted to go to the jury, no faulty instructions given and none refused which should have been given, the verdict of the jury in such case, if approved by the trial court in overruling a motion for a new trial, can not be corrected on appeal if there is any evidence in the record fairly tending to support it, though the other evidence in the record may clearly and manifestly preponderate against it, and show that the verdict is almost, if not quite, conclusively wrong. In such case justice has not been administered. The defeated party, if property is involved, is as wrongfully, so far as the result is concerned, deprived of his possessions as though he had been compelled at the muzzle of a revolver to hand over his money to the highwayman, with the difference that the methods of the

highwayman were illegal, while the verdict of the jury and the conclusion of the court thereon were reached by "due process of law." But the result to the loser is the same in each case, with an advantage, perhaps, in his favor as to the unlawful despoiling of his property in the matter of costs and attorney fees.

But peaceable and orderly society, civilization itself, can not exist without courts, nor, I may say also, without juries. I believe in the jury system. I believe it is one of the safeguards of our liberties, not so much, it may be, in reaching the most correct results in investigating disputed questions of fact, as in bringing the people in closer contact with the courts, whereby from day to day they see and are impressed with the impartiality and freedom from bias of the judges, their veneration for the majesty of the law, and their conscientious and painstaking care in administering justice between man and man. Probably it is to the jury system, more than to anything else, that is attributable the high respect of the people for the courts wherever the common law prevails. An occasional miscarriage of justice, however disastrous it may be in its consequences upon the unfortunate litigant, can not be made ground for questioning the integrity of courts or weakening the high respect in which their decisions are justly held by the people.

Yet we are always looking for and anticipating something better, even in the administration of justice. Courts are human institutions and can not be wholly divested of the weaknesses which are inseparable from every work of man. Everything connected, not only with the principles, but with the practice of law is progressive. Its present high position is the work and result of the evolution of the ages. It has not yet attained, and we dare hardly hope that it ever will attain, perfection. But to the bench and the bar is committed in a special manner the work of its advancement. For this purpose bar associations, national, state and county, are formed, working carefully and thoughtfully to make the law and its application to the ends of justice more and more perfect, as well

as to securing and maintaining a high standard of professional learning and conduct upon the part of their members.

Notwithstanding the high perfection which the administration of justice has attained, there are probably few lawyers or judges who have not been impressed with defects which, in their opinion, may at least be measurably, if they can not be wholly, cured.

Outside of the legislature there is no more appropriate place for the lawyer to present his views on law reforms, or to point out what he may consider as imperfections in the administration of justice, than in an association like this. Availing myself of a privilege for which I am indebted to the duty imposed upon me on this occasion, I shall briefly call attention to generally conceded omissions of duty upon the part of trial courts, and to the deficiency of the law in providing any adequate remedy by appeal.

The duty of trial judges in sustaining motions for new trial and their omissions in this respect have been so frequently pointed out by our appellate courts that what I say upon this branch of my subject will be sustained by the highest authority. It will be seen from the decisions to which I shall refer that, while the jury are the exclusive judges of the credibility of witnesses and of the weight of the evidence, this privilege terminates when the verdict is returned. The verdict should have no influence with the trial judge when called upon to rule on a motion for a new trial. In considering this motion, the verdict should be excluded from his mind. He should then look wholly to the evidence, consider its weight, and, in doing this, should carefully determine for himself the credibility of the witnesses and the weight of the evidence, applying thereto all the legitimate tests afforded by his superior knowledge and experience.

In one case our supreme court, speaking of the duty of the trial court in ruling on a motion for a new trial, said:

"It should always be kept in mind that the rule which governs a circuit court in deciding a motion for a new trial, upon the

ground that the verdict is not sustained by sufficient evidence, is very different from the rule which governs the supreme court in deciding the same question when brought before it by appeal. The circuit court presides over the case, knows with what ability or animus it is prosecuted or defended, has the jury and their conduct before it, sees the witnesses, their looks and manners, hears their statements, and knows whether willingly or reluctantly made; in short, sees the actual trial from its beginning and throughout its progress to the end with all the indices of truth and falsehood before it, from all of which it may judge the question and decide. * * * It sometimes appears to us that the circuit court ought to have granted a new trial, when we can not judicially reverse the case; and, sometimes, we fear that the circuit court follows the rule which governs the supreme court, instead of the rule which should govern the circuit court.

"In the circuit court, it must clearly appear that substantial justice has been done by the verdict, or a new trial should be granted; in the supreme court, it must clearly appear that substantial justice has not been done, or the judgment should be affirmed. If each court will constantly remember the rule of law which governs it, and always put it into practical effect, then substantial justice will be done in every case." (*Christy* v. *Holmes*, 57 Ind. 314.)

Again, in another case, the supreme court said:

"The judge of the trial court has just as good an opportunity and as efficient means of weighing the testimony as the jury has. And, though the jury are the exclusive judges of the weight of the evidence, that only lasts until their verdict is returned and a motion for a new trial is filed, in which is assigned as a reason therefor that the verdict is not supported by sufficient evidence. Then the trial judge becomes the judge of the weight of the evidence, and if, in his opinion, the preponderance of the evidence is against the verdict so strong that he should have felt compelled to have found the

other way, the law makes it his duty to grant the motion for a new trial. While it is sometimes strongly asserted that trial judges, for want of courage, shrink from this plain duty, yet the legal presumption is that the trial judge has conscientiously, faithfully, and courageously discharged his whole duty, and that presumption continues on an appeal until the contrary is made to appear affirmatively by the record in this court. Hence the propriety of the rule in this court that affirms the verdict if the evidence that tends to support it, considered alone, is sufficient to justify the jury in finding it. (*Railroad Company* v. *Madden,* 134 Ind. 462.)

In another case the supreme court said:

"When the evidence is conflicting, and the jury find against the clear preponderance thereof, then the verdict or finding is not sustained by sufficient evidence within the meaning of the sixth subdivision, section 568, 1 Burns R. S. 1894 (R. S. 1881, section 559), authorizing a new trial. That constitutes an error of fact and not of law. It is the bounden duty of the trial judge to correct such error." (*Deal* v. *State,* 140 Ind. 354.)

Other like quotations might be made, and still there are other frequent expressions by appellate courts like this: "As the evidence comes to us in the record, it seems to us that the court below should have sustained the motion for a new trial, but, as there is evidence in the record which sustains the verdict, this court, under well-established rules, can not reverse the judgment on account of the alleged error in overruling that motion."

I would not be understood as insisting, nor do the decisions of appellate courts go to the extent of holding, that it is the duty of the trial court, in every case where it appears to him that the verdict may be against the weight of evidence, to grant a new trial. Cases there are, no doubt, where the evidence is so evenly balanced that it is exceedingly difficult, if not impossible, to say where the preponderance lies. But the court, in reviewing the evidence on the motion for a new trial, brings to the performance of this most

important duty a well-trained and disciplined mind, learned in the law, familiar with the tests for determining the credibility of witnesses and weighing evidence. His superior knowledge, obtained from books, from practice at the bar, and from his experience on the bench, give him immeasurably the advantage of the jury in discovering truth and detecting falsehood. In other words, he comes to the discharge of his duty as a trained expert, like the learned and honest scientist, desirous only of ascertaining the real facts, uninfluenced by the prejudices or opinions of others, and banishing from his mind all thought as to whether the real and controlling facts in the case will benefit the one party or the other. Now, such a case there may be, where two or more judicial experts, seeing the same witnesses and hearing the same evidence, may honestly come to different conclusions. In such a case, the verdict of the jury should not be disturbed. But such cases are rare. It is often said that there are two sides to every case. But this is only apparently so. There can, legally speaking, be only one *right* side to a case. One of the parties is in the right and the other in the wrong as to part or all the issues. In the great majority of cases tried before juries, the evidence is not so equally balanced as to make it extremely difficult for the trial judge to ascertain which party is in the right. In the trial of most cases, a little fact will crop out here, another there, all through the trial, some of which are tacitly admitted and others not seriously controverted. Now, these little facts, when put together and their reasonable inferences considered, may, to the learned judicial mind, determine the truth or falsity of the more important of the controlling facts in issue, and to which the principal evidence on each side has been directed. Right is always right and wrong is always wrong. Counsel who have the right side of a case ought, as a rule, if the evidence is available, to be able to so present it that, if the jury decide against him, he may have confidence in a motion for a new trial. A verdict which the judge is satisfied is wrong as being against the weight of evidence should

not be permitted to stand. Yet such a verdict, if sustained by any evidence at all, though the preponderance of evidence may be clearly against it, can not, after its approval by the trial court, in overruling a motion for a new trial, be made available for a reversal of the judgment on appeal.

These considerations, in view of the large interests to persons and property involved in jury trials, make the position of the trial judge one of transcendent importance and responsibility. In his hands are the issues of life and death. In his hands are the issues whether the honest owners of property shall retain or regain their lawful possessions or whether they shall be despoiled of their property, and the fruit of their honest labor be kept or turned over to the unworthy and the wrongdoer.

I would not for a moment be understood as intimating that trial judges are uniformly or even quite generally derelict in their duties in the respect named. To the contrary, I believe that, as a general rule, there are no more conscientious or painstaking men than the trial judges in striving to do their whole duty fearlessly, honestly, and impartially, but the numerous decisions of courts of last resort show that there are many times when their duties respecting their decisions relating to evidence are not performed. And, outside of these decisions, in the hundreds of cases never appealed, it is not an unreasonable inference that they contain an equal percentage of verdicts not sufficiently sustained by evidence. Whether this, in any given case, arises from want of capacity upon the part of the judge, or from his inattention to the case on trial, or whether from want of courage he shrinks from his obvious duty, the result to the unjustly defeated litigant is the same.

It is unfortunate that it should be "sometimes strongly asserted," as the supreme court says in the decision from which I have quoted, "that trial judges, for want of courage, shrink from this plain duty," namely, the duty of vacating wrong verdicts. The assertion is no doubt often made unjustly. It would, perhaps, be better, even

where there is cause for it, that it should not be made. It would still be better if there never was any ground for its being made. A man lacking in courage, one not prepared to disregard public or private opinion when that opinion, as often happens, is in the wrong, has mistaken his place when he goes or remains upon the bench. The vindictive public sentiment which calumniated John Marshall for his then unpopular decisions in the trial of Burr, going so far as to cause him to be burned in effigy in company with the alleged conspirators and their attorneys, cast no shadow over the fame of that immortal jurist. His decisions in that case, as in all others, were based upon the firm foundation of the law, and the opposition and calumny with which some of them at the time met have long since yielded to their universal approval. They stand as monuments, more endurable than can be made of bronze or granite, to his memory.

Judges are like other men. All men like the approbation of their fellow citizens, especially of those whose good opinion is worth having. But the judge who is conscientious, faithful and courageous in the discharge of his whole duty is the one who will obtain and retain the most desirable popularity among his fellow citizens. If, by a decision he happens to give offense, time will usually vindicate his action and place his name and fame on a more solid foundation than they would have reposed upon had he, in the case for which he was censured, yielded to popular clamor or individual wishes and gone wrong.

The members of the mob that burned in effigy the immortal chief justice, whose memory we this day celebrate, because, against popular sentiment and the strong influence of a powerful administration, he firmly held in the trial of Burr "that treason against the United States consists only in levying war against them or in adhering to their enemies, giving them aid and comfort, and that no person can be convicted of treason unless on the testimony of two witnesses to the same overt act," have long since been forgotten,

but the name and fame of the great jurist will endure to the latest period of recorded time. Had a John Marshall occupied the judgment seat of Pilate, the tragedy on Calvary would never have had the sanction of a judicial decision.

The rule of courts of last resort, when not regulated by statute, that they will not on appeal disturb the verdict of a jury after its approval by the trial court in overruling a motion for a new trial, where there is any evidence in the record fairly tending to support it, without reference to how strong the opposing proof may be, is so long and well established that the lawyer who would ask for the overruling of the hundreds of decisions upon this point would be admired more for his temerity than his discretion. The same rule, however, requires that the record must contain some evidence fairly sustaining the verdict. The rule in its application, like all others, has not been entirely uniform, and evidence in one case, which would be regarded as sufficient, would appear in others not to be so. If the evidence which sustains the verdict is plainly and manifestly absurd, as being in conflict with well-known laws of nature or entirely outside of all human experience, such a verdict would not stand in a court of last resort, though having the indorsement of the trial judge in overruling a motion for a new trial. Such a verdict would, indeed, have no evidence to support it, because the unreasonably absurd statements of witnesses could not in such case be properly regarded as evidence. They would be self-evidently false and could have no weight in a court of appeals, as they should have had none in the trial court.

As to the construction of the rule that appellate courts will not disturb the verdict when it is sustained by some evidence, the valuable paper read by Judge Comstock before this association in 1899 is instructive, reviewing, as it does, the decisions and showing that they have not always been uniform as to the quantity of proof required.

The reasons given by appellate courts why judgments will not

be reversed on the weight of evidence are that the jury and the trial court had the witnesses before them; had an opportunity to observe their manner and appearance upon the witness stand, to judge of their character and intelligence, and, generally speaking, had before them those living *indicia* by which we ordinarily judge of the truthfulness and credibility of evidence.

Not disputing that the jury and trial court have advantages in the respects named, it may sometimes occur, upon reflection, that the importance of these "advantages" are possibly overestimated, and that they may, at times, lead the jury to wrong conclusions. Appearances are ofttimes terribly deceiving. "All that glitters is not gold." Take, for instance, two witnesses, both unknown to the jury. One may be a rogue presenting a good appearance. He is fluent in language, but sufficiently guarded in expression not to fall into plain self-contradictions. He has studied his story, and by long practice as a witness knows by voice, expression of countenance and gesture how to tell it in the most plausible and effective way. He is unawed by the presence of the court, the jury, the attorneys, or the bystanders, and is acquainted with the methods of lawyers in examining and cross-examining witnesses. He is at home on the witness stand. He carefully weaves into his narrative enough of the unimportant facts testified to by other witnesses to give his testimony the appearance of being corroborated, but when he comes to the main fact or facts of the case, he adroitly gives them a coloring so as to convey a false meaning to the jury.

Another witness in the case, called by the opposite side, may be a perfectly honest and truthful man. His appearance is not so impressive as that of the former witness. It is the first time he was ever upon the witness stand. As he takes his seat he sees that the eyes of the court, the jury, attorneys, and bystanders are upon him. The embarrassment of the situation makes him feel awkward and look awkward. He is lacking in fluency of speech. He has none of the arts of pronunciation, emphasis or gesticulation which charac-

terized the former witness. His great desire and carefulness to tell the exact truth add to the hesitancy of his speech. He inadvertently, or rather ignorantly, in the course of his evidence, commences to tell what somebody, not a party to the action, said. The quick interruption of counsel and the admonition of the judge make his confusion worse confounded, for he can not well see how he can truthfully narrate the occurrence about which he is called to testify without giving the hearsay evidence. Without it, it seems to him, there is a missing link. But he finally leaves the witness stand, having told nothing but the truth, and having, in his verdant way, testified to every fact necessary to sustain the cause of action or defense of the party in whose favor he was called. But the impression that he leaves upon the minds of the jury is not nearly so favorable as that of the accomplished liar who preceded him. Counsel of the party, against whom the unfavorably appearing and awkwardly acting witness has testified, in his argument to the jury, calls attention to his bad appearance on the witness stand; and, when the court comes to charge the jury that, in weighing the evidence and considering the credibility of witnesses, they may take into account the appearance of the witnesses and their manner upon the witness stand, the jury at once conclude that the testimony of the unsophisticated witness should be excluded and that of the wily, fine appearing fellow accepted as unquestioned truth. And they would probably be justified in so doing under the common instruction given by the trial courts as to the tests by which they are to decide the credibility of witnesses. And the advantage which the jury possess, as illustrated in the supposed cases of the two witnesses, is, we are often told by appellate courts, one which prevents them from weighing the evidence in cases of conflict. I doubt whether this is the case. I am not prepared to say that the careful judge, who reads the evidence of witnesses word for word as it fell from their lips, may not arrive at a more just conclusion than the jury or the trial judge, who usually passes upon the motion for a new trial

largely from his memory of the evidence, or, at least, a considerable part of it. While thus reading the evidence, it is true that the advantages of seeing and hearing the witness are absent, but the disadvantages of being misled by mere forms of speech and external appearance, which of themselves can neither make evidence true or false, are also absent. If appearances and manners are controlling factors in deciding the credibility of witnesses, jurors should possess the detective genius and experience of a Sherlock Holmes.

The jury are also told in the charges of the court that, in determining the credibility of witnesses their feelings of bias or prejudice in favor of or against either of the parties may be considered. The proposition announced is correct, but is seldom of any practical value in leading the jury to a correct conclusion. Every lawyer must have observed that verdicts are occasionally carried in favor of a party by the plain and manifest interest which his witnesses show in his behalf. Though their evidence may be almost wholly unimportant and not sufficient to establish a necessary fact in the case, their very manner of showing that they sincerely believe the party for whom they testify is in the right imparts itself to the jury, and the jury come to the same conclusion. The principle that controls in such a case may be like that by which popular audiences are often moved by the impassioned and vehement rhetoric of the speaker, rather than by his logic.

Offsetting the disadvantages, as far as allowable, against the advantages of seeing and hearing the witnesses while delivering their testimony, and taking into consideration the difficulty that jurors have in retaining in their memory all the evidence, together with their liability of placing a wrong construction upon it, through ingenious argument of counsel, however legitimately conducted, it would seem that an appellate court, with all the evidence before it, aided by the briefs of counsel, is quite as fully prepared, after carefully reading the evidence, or such parts of it as counsel may call

attention to, and after comparing one part of it with another, to arrive at a just conclusion, as the jury or even the trial judge.

It seems that the suggestion is at least worthy of consideration, that it might be well by legislative enactment to provide that a judgment should be reversed where it is based upon a verdict or a finding that is clearly and manifestly against the weight of evidence, though there may be evidence in the record which, taken by itself, is sufficient fairly to sustain the verdict or the finding.

In chancery cases, not triable by jury, it is held in most jurisdictions that appellate courts may review questions of fact and decide for themselves whether the evidence is sufficient to support the finding, and in those jurisdictions judgments are frequently reversed where the findings are clearly against the preponderance of evidence. And no distinction in those jurisdictions seems to be made between oral and documentary evidence. But in this state no distinction is made between chancery and common law cases, and the findings of the trial court in a suit in equity stand precisely as the verdict of the jury in a common law action. Neither is reversible on appeal if the record contains only evidence fairly supporting it, without regard to the preponderating weight of evidence against it. The decisions of our appellate courts upon this question seem to be more consistent than those of other states, where a different practice prevails. The methods of proof in equity and common law cases are substantially the same. There can be no greater reason for reversing the finding of a trial court in a chancery case than for reversing the verdict of a jury in a common law case upon the evidence. In fact, if there should be any distinction, it would seem that the finding of the trial court upon questions of evidence should, upon appeal, be less assailable than the verdict of the jury. The importance of the trial judge discharging his duty and granting a new trial, where he is not satisfied that the verdict is right, is one which appellate courts have often urged in strong and unmistakable language.

The jury is an important auxiliary of the court in the administration of justice. But it is not the court. The judge is the court. If juries learn that their verdicts, to stand, must be right and satisfy the judgment and conscience of the impartial and fearless judge presiding at the trial, it may be that greater care will be observed by them. And if appellate courts were invested with power to review the evidence and reverse judgments when verdicts and findings are clearly against the weight of evidence, may it not be also that trial courts would use greater care? If such an end could be attained, certainly it would be in the interest of the administration of justice. Courts are organized to administer justice, and thereby preserve the peace and good order of society.

It is, I respectfully submit, worthy of careful consideration and thought, whether a change in the statute may be desirable, making it obligatory upon appellate courts to reverse a judgment where the finding or verdict is clearly and palpably against the weight of evidence, though the record under present rulings contains enough evidence to sustain it.

Where a wrong is done to a party by a finding or verdict, plainly against the weight of evidence, it is quite as harmful as an erroneous ruling on a pleading or an instruction, and, while the latter may be corrected on appeal, no good reason occurs why the former should not also be rectified in the same manner.

There is much distrust in jury trial. The expression is common that if a man has a good case he should, if possible, have it tried by the court; but that, if he has a bad one, he had better take his chances with a jury. To avoid jury trial, disadvantageous compromises are made out of court. The jury system is too firmly rooted in jurisprudence to be eradicated. It is not desirable that it should be eradicated, but it is desirable that it should be improved. Much may be accomplished if trial courts will use the power with which they are amply invested to set aside wrong verdicts. And much more can be accomplished if appellate courts had authority to re-

verse judgments based upon verdicts clearly against the weight of evidence.

The President: The next order of business is the reading of the minutes of the last annual meeting, but, as they have been printed and distributed to the members, we will, by consent, pass that order of business.

The next order of business calls for a report from the executive committee. As chairman of the executive committee, I report on behalf of the committee that General John C. Black, who had been engaged to deliver the oration this afternoon on John Marshall, has disappointed us in coming on account of sickness, and his place will be filled by Mr. William A. Ketcham. We will meet here this afternoon at three o'clock, and, while we regret that General Black can not be with us, we feel assured that we will be amply compensated for our attendance this afternoon in listening to the oration of Mr. Ketcham.

The next in order, gentlemen, is the report of the treasurer.

The treasurer, Theodore P. Davis, read the following report:

TREASURER'S REPORT

INDIANAPOLIS, IND., February 4, 1901.

To the State Bar Association of Indiana:

As treasurer of the State Bar Association of Indiana, I beg to submit the following report:

1900.	Amount on hand at last report, July 10, 1900	$1,674	58
	Dues from		
July 10.	James W. Noel	5	00
	Robert W. McBride	5	00
	A. L. Sharpe	5	00
	Joseph L. Custer	5	00
	W. P. Rogers	5	00
	F. M. Jackson	5	00
	Virgil S. Reiter	10	00
	Frank B. Burke	10	00
	J. E. Williamson	5	00
	John F. Neal	5	00
	Robert H. Proctor	5	00
	Frederick E. Matson	5	00
	Francis M. Griffiths	5	00
	Lafayette Perkins	5	00
	George S. Pleasants	5	00
	Carroll S. Tandy	5	00
	U. S. Lesh	5	00
	Alphonso Wood	5	00
	H. E. Mathias	5	00
	Hiram Teter	5	00
	Augustin Boice	5	00
	W. J. Henley	15	00
	Samuel Parker	5	00
	F. J. Reinhard	10	00
	Edward D. Reardon	5	00
	Richard A. Jackson	5	00
	Lucian Harris	5	00
	H. C. Morrison	5	00

July 11.	Samuel Morris	$5 00
	H. J. Paulus	10 00
	W. P. Fishback	10 00
	J. G. Ibach	5 00
	Otis L. Ballou	10 00
	U. Z. Wiley	5 00
	Lee F. Bays	5 00
	Louis Newberger	5 00
	Clark J. Lutz	5 00
	George H. Batchelor	5 00
	John O. Piety	5 00
	P. O. Colliver	5 00
	J. B. Collins	5 00
	Chas. N. Thompson	10 00
	C. M. Zion	5 00
13.	Henry C. Starr	5 00
	George F. Palmer	5 00
14.	J. D. Henderson	10 00
16.	Jesse S. Reeves	5 00
	Merrill Moores	5 00
	George W. Grubbs	10 00
17.	Daniel J. Moran	5 00
	John C. Nelson	5 00
	Charles H. Worden	5 00
	David W. Henry	5 00
	Wm. A. Ketcham	10 00
18.	Lucius C. Embree	10 00
	Albert J. Beveridge	5 00
19.	Thomas E. Ellison	5 00
	H. G. Keegan	5 00
	B. K. Elliott	5 00
	Flavius J. Van Vorhis	5 00
20.	W. D. Robinson	5 00
21.	Evans Woollen	5 00
24.	John V. Hadley	5 00
	Harry B. Tuthill	5 00
26.	Mortimer Nye	5 00
Aug. 7.	R. O. Hawkins	5 00
	M. J. Clancy	5 00
10.	R. W. McBride	10 00
21.	F. F. James	5 00
Oct. 8.	E. A. Ely	10 00
Nov. 20.	Leon O. Bailey	5 00
1901		
Jan. 18.	Albert Rabb	5 00
	Charles Martindale	5 00

Jan. 18.	Noble C. Butler	$5 00
	John L. McMaster	5 00
	John V. Hadley	5 00
	Nathan Morris	5 00
	C. G. Renner	5 00
19.	Charles L. Jewett	5 00
	Abram Simmons	5 00
	Joseph S. Dailey	5 00
	C. M. Zion	5 00
	C. A. DeBruler	5 00
	William P. Breen	5 00
	William Cummings	5 00
	James Bingham	5 00
	Alexander Gilchrist	5 00
	Ephraim Marsh	5 00
	William Ward Cook	5 00
	John T. Beasley	5 00
	John W. Spencer	10 00
	Jay A. Hindman	5 00
	J. G. Ibach	5 00
	Thomas L. Stitt	5 00
	Owen N. Heaton	5 00
	C. M. McCabe	5 00
	Edward D. Reardon	5 00
	Horace E. Smith	5 00
	Samuel L. Morris	5 00
	George Ford	5 00
	Frederick E. Matson	5 00
	George E. Clarke	5 00
	William C. Smith	5 00
	John L. Rupe	5 00
	George W. Funk	5 00
	Henry C. Starr	5 00
	Thomas R. Paxton	5 00
	Charles E. Shiveley	5 00
	Charles A. Weathers	5 00
	Oliver H. Bogue	5 00
	James B. Harper	5 00
	J. E. McCullough	5 00
	Elbert M. Swan	5 00
21.	J. W. Headington	5 00
	John S. Bays	5 00
	Lee F. Bays	5 00
	Charles A. Dryer	5 00
	James M. Barrett	5 00
	Simeon Stansifer	5 00

Jan. 21.	W. H. DeWolf	$5 00
	S. B. Davis	5 00
	G. V. Menzies	5 00
	Robert D. Richardson	15 00
	E. C. Vaughn	10 00
	J. H. Louden	5 00
	J. C. Blacklidge	5 00
	C. S. Denny	5 00
	J. W. Fesler	5 00
	A. G. Smith	5 00
	G. L. Reinhard	5 00
	Charles W. Miller	5 00
	Edwin Taylor	5 00
22.	W. G. Colerick	5 00
	H. M. Logsdon	5 00
	Milton Kraus	5 00
	Walter A. Funk	5 00
	Wm. V. Stuart	5 00
	A. A. Chapin	5 00
	C. C. Shirley	5 00
	H. B. Shiveley	5 00
	W. H. H. Miller	5 00
	Francis E. Baker	5 00
	John E. Lamb	5 00
	Eli F. Ritter	15 00
	Charles F. Remy	5 00
	W. S. Shirley	5 00
23.	Frank W. Morrison	5 00
	James L. Mitchell	5 00
	Nelson K. Todd	15 00
	Charles H. Worden	5 00
	Thomas J. Brooks	5 00
	Louis Newberger	5 00
	Samuel R. Artman	5 00
24.	James S. Drake	5 00
	C. S. Tandy	5 00
	William A. Traylor	5 00
25.	L. J. Kirkpatrick	5 00
	Sol A. Wood	5 00
	Wm. B. Austin	5 00
	B. V. Marshall	5 00
	Milton Bell	5 00
	W. C. Purdum	5 00
26.	Alphonso C. Wood	5 00
	Dan W. Simms	5 00
	Henry C. Pettit	5 00

Jan. 28.	I. H. Fowler	$5 00
	Mark Storen	5 00
	Guilford A. Deitch	5 00
	Charles W. Smith	5 00
	Thomas J. Cofer	5 00
	Allen Zollars	5 00
	S. M. Ralston	5 00
	Albert J. Beveridge	5 00
	W. H. Martin	5 00
	Samuel P. Baird	5 00
	Vinson Carter	5 00
	Frederick H. Wiley	5 00
	Henry Clay Allen	5 00
29.	T. E. Howard	5 00
	James B. Black	5 00
	John W. Donaker	5 00
	James A. Rohback	5 00
	Charles P. Drummond	5 00
	Andrew A. Adams	5 00
	C. C. Binkley	5 00
	William R. Haugh	10 00
30.	J. F. Elliott	5 00
	George H. Koons	10 00
	Ralph Applewhite	5 00
	L. W. Royse	10 00
	James H. Jordan	5 00
	L. J. Monks	5 00
31.	W. C. Overton	5 00
	Hiram Teter	5 00
Feb. 1.	V. H. Lockwood	5 00
	Richard A. Jackson	5 00
	James W. Morrison	5 00
2.	Augustin Boice	5 00
	Silas A. Hays	5 00
	C. C. Hadley	5 00
	P. W. Bartholomew	5 00
	Benjamin Crane	5 00
	Frank E. Gavin	5 00
	Theo. P. Davis	5 00
4.	Eph K. Strong	5 00
	John R. Wilson	5 00
	John T. Dye	5 00
	Robert S. Taylor	5 00
	J. L. Custer	5 00
	W. A. Pickens	10 00
	James W. Noel	5 00

Feb. 4.	A. C. Ayres	$5 00
	Samuel Ashby	5 00
	Total received	$2,874 58

As such Treasurer I have expended the following amounts:

1900		
July 12.	Journal Printing Company—	
	Printing postal cards	$2 00
	Senator Lindsay—	
	Expenses attending 1900 Association	50 00
	Elva I. Holdson—	
	Services as stenographer	5 00
17.	Rowland Evans—	
	Services reporting 4th annual meeting and transcript of proceedings, etc	69 00
	Merrill Moores—	
	Expenses as Secretary from July, 1899, to July 13, 1900	41 00
	The Bates—	
	Account of Wm. Lindsay	13 24
18.	Garber & Carpenter—	
	Report of speeches at banquet and transcript of same	20 30
19.	The Bates—	
	Banquet 1900	587 50
25.	Harry Tutewiler—	
	Chairs for last annual meeting	4 00
26.	Reporter Publishing Company—	
	300 circulars	3 00
Aug. 7.	Reporter Publishing Company—	
	450 labels	2 00
8.	Merrill Moores—	
	Postage on reports	5 50
10.	Hogan Transfer Company—	
	Delivering books, hauling, etc	35 15
	C. E. Hollenbeck—	
	Printing 4th annual report	407 00
25.	Minnie C. Morgan—	
	Services as stenographer, secretary's office	15 00
	Elva I. Holdson—	
	Services as stenographer, treasurer's office	10 00
	George L. Reinhard—	
	Expenses as member executive committee	4 00
	Wm. P. Breen—	
	Expenses as member executive committee	6 10

Oct.	18.	Reporter Publishing Company—	
		450 postals and printing	$6 00
Dec.	11.	Central Printing Company—	
		Printing in regard to constitutional amendments	5 00
	22.	Minnie C. Morgan—	
		Services as stenographer in secretary's office for quarter ending December 31, 1900	15 00
		Elva I. Holdson—	
		Services as stenographer in treasurer's office for quarter ending December 31, 1900	15 00
	28.	John R. Wilson—	
		Postage for mailing constitutional amendment matter	7 10
		George L. Reinhard—	
		Expenses attending executive committee meeting	5 50
		T. E. Howard—	
		Expenses attending executive committee meeting	3 50
		Postage used in treasurer's office	10 00
	1901		
Jan.	17.	Reporter Publishing Company—	
		500 note circulars	3 00
		Merrill Moores—	
		500 2-cent envelopes	10 60
		C. E. Hollenbeck—	
		Printing brief in case testing constitutional amendment	34 00
	23.	C. E. Hollenbeck—	
		2,000 programmes	12 00
		Reporter Publishing Company—	
		100 circular letters, 500 circular notes, 400 printed return postals, 500 receipt blanks	15 25
		Postage used in treasurer's office	5 00
Feb.	2.	Evans Woollen—	
		Fee in brief constitutional case	100 00
		Total	$1,526 74

RECAPITULATION.

Total amount received	$2,874 58
Total amount expended	1,526 74
Balance	$1,347 84

Which amount is now on deposit in the Indiana National Bank.

THEO. P. DAVIS, Treasurer.

THE PRESIDENT: The report of the treasurer is before the association.

MR. U. Z. WILEY: Mr. President, I move that the report of the treasurer be approved and adopted.

The motion, being duly seconded, was adopted.

THE PRESIDENT: The next is the report of the committee on jurisprudence and law reform.

There was no report submitted from that committee.

THE PRESIDENT: The next is the report of the committee on judicial administration and remedial procedure.

MR. JOHN G. WILLIAMS: Mr. Chairman, the committee, of which I have the honor to be chairman, has nothing to report. We were instructed to meet this morning at nine o'clock, and I was here and held a meeting by myself, but did not arrive at any conclusion.

THE PRESIDENT: Report of the committee on legal education and admission to the bar.

MR. SIDNEY B. DAVIS: At the last annual meeting of the association the committee was instructed to draft a suitable bill for submission to the legislature, in event the then pending constitutional amendments were duly ratified. The supreme court, having already passed upon the amendments, and declared that they were not ratified, this decision of the supreme court has left our committee nothing to do.

THE PRESIDENT: Report of the committee on publications.

MR. ALBERT RABB: Mr. President, the committee on publications desires to submit the following report:

INDIANAPOLIS, February 4, 1901.

To the State Bar Association of Indiana:

Your committee on publications reports that the proceedings of the last annual meeting of the association were printed and distributed to members of the association. Credit for the promptness of

the printing and distribution should be given to Mr. Merrill Moores, secretary. Respectfully submitted,

ALBERT RABB,
For the Committee.

THE PRESIDENT: Committee on grievances.

There was no report from this committee.

THE PRESIDENT: Committee on admission of members.

THE SECRETARY: The report of that committee has been handed to the secretary and I will read it.

REPORT OF COMMITTEE ON MEMBERSHIP.

INDIANAPOLIS, February 4, 1901.

To the State Bar Association of Indiana:

The undersigned, committee on admission of members, respectfully report that they have carefully examined the applications for membership in this association of

Samuel R. Alden, Fort Wayne.
Frank H. Blackledge, Indianapolis.
Charles A. Burnett, Lafayette.
Frederick W. Cady, Indianapolis.
John H. Cartwright, Delphi.
Albert E. Chizum, Morocco.
Newton S. Doughman, Fort Wayne.
Edward W. Felt, Greenfield.
John H. Gillett, Hammond.
George P. Haywood, Lafayette.
Francis T. Hord, Columbus.
Francis T. Hord, Indianapolis.
Martin M. Hugg, Indianapolis.
Uriah Stokes Jackson, Greenfield.
Roscoe E. Kirkman, Richmond.

Elijah B. Martindale, Indianapolis.
Augustus Lynch Mason, Indianapolis.
Reuben N. Miller, Indianapolis.
William W. Thornton, Indianapolis.

We find said persons worthy and honorable members of the bar of this state, and we respectfully recommend that they be admitted as members of the association. Respectfully submitted,

ALLEN ZOLLARS, Chairman.

The secretary read article V of the Articles of Association.

THE PRESIDENT: Does any member present demand a vote? There being no objection, the persons whose names have been read will be considered as admitted members of this association.

The committee on obituaries will now present their report.

THE SECRETARY: As *ex officio* member of that committee, I beg to say that the committee has to report to the association that during the last year, in fact, during the last month, there have been four deaths in the association. Those are Julius W. Youche, William P. Fishback, Charles L. Holstein and Robert C. Bell.

Obituaries have been prepared upon Charles L. Holstein, by James B. Black, and upon Robert C. Bell, by William P. Breen, and the committee present the memorial which was adopted by the Marion County Bar Association concerning William P. Fishback. The secretary was not notified until this morning of the death of Mr. Youche, but an obituary notice will be prepared for him.

MR. JOHN G. WILLIAMS: I move that the obituary notices be all printed in the proceedings of this meeting.

THE PRESIDENT: It is moved and seconded that the memorials of the deceased members be published in the report of the proceedings of this meeting, including that of Mr. Youche, to be furnished later. All in favor of the motion will say aye; contrary, no. The motion is unanimously adopted.

THE PRESIDENT: Reports of special committees.

Mr. George L. Reinhard: Mr. President, I was appointed a member of a special committee for the purpose of drafting a law, on the supposition that the new amendments were adopted. Inasmuch as that event is said not to have occurred, I believe the committee has no report to make.

The President: Miscellaneous business. Now, gentlemen, the election of officers for the coming year is in order under this head. The first office to fill is that of president of the association.

Mr. Allen Zollars: Mr. President, I want to nominate for the office of president of this association Judge Theodore P. Davis, of Noblesville. He has been treasurer for some time, is quite familiar with the affairs of the association, and has proved himself to be active and industrious, and he is centrally located here in this city.

Mr. Charles Martindale: I place in nomination the name of William A. Ketcham, of Indianapolis, for president.

Mr. William A. Ketcham: Mr. President, I think it would be inadvisable to establish the precedent of promoting the vice-president to the office of president. That custom has been found in other organizations to be embarrassing in time, and I therefore withdraw my name.

The President: Are there any other nominations? Mr. Ketcham has withdrawn his name as a candidate.

Mr. Enoch G. Hogate: Mr. President, if there are no other nominations, I move that the secretary cast in one ballot the entire vote of the association for Judge Theodore P. Davis for president of this association for the ensuing year.

Mr. George L. Reinhard: I second that motion, Mr. President.

The motion was unanimously adopted.

The Secretary: Mr. President, I have the honor to report that Theodore P. Davis, of Noblesville and Indianapolis, has received the unanimous vote of the association.

The President: Judge Davis, having received the unanimous

vote of this association, I declare him to be the duly elected president of this association for the ensuing year.

The next office to fill is that of vice-president.

MR. ULRIC Z. WILEY: I nominate, Mr. President, for the office of vice-president Judge George L. Reinhard, of Bloomington, Indiana.

MR. EDWIN TAYLOR: I move that the secretary be instructed to cast the vote of the association for Judge Reinhard for vice-president.

The motion, being duly seconded, was adopted.

THE SECRETARY: I have the honor to report, Mr. President, that the entire vote of the association has been cast for Judge Reinhard, of Bloomington, for the office of vice-president.

THE PRESIDENT: Judge Reinhard, having received the unanimous vote of the association, I declare him elected vice-president for the coming year.

MR. WILLIAM A. KETCHAM: For the office of treasurer, in order that he may have the benefit of the retiring treasurer's counsel and advice, I desire to place in nomination Judge Frank E. Gavin.

THE PRESIDENT: The next office to be filled, Mr. Ketcham, is that of secretary.

MR. WILLIAM P. BREEN: Mr. President, I nominate Mr. Merrill Moores.

MR. CHARLES MARTINDALE: I move, Mr. President, that Mr. John R. Wilson act as secretary for that purpose and cast the vote of the association for Mr. Moores.

The motion was adopted.

MR. JOHN R. WILSON: Mr. President, I beg leave to report that Mr. Merrill Moores has received the unanimous vote of this association for the office of secretary.

THE PRESIDENT: Mr. Merrill Moores, having received the unanimous vote of this meeting, I declare him duly elected secretary of the association for the ensuing year.

Mr. William A. Ketcham: Now, Mr. President, I would like to make the nomination I attempted to make a little while ago, and I make the usual motion in regard to the secretary casting the ballot of the association for Judge Frank E. Gavin for the office of treasurer.

The motion, being duly seconded, was adopted.

The Secretary: Mr. President, I report the unanimous election of Judge Gavin as treasurer.

The President: Judge Frank E. Gavin, having received the unanimous vote of this association, I declare him elected treasurer for the ensuing year.

The President: The next in order, gentlemen, is the election of four members of the executive committee.

Mr. Albert Rabb: As one member of the executive committee, I wish to nominate Mr. Noble C. Butler, of Indianapolis.

Mr. Samuel L. Morris: I nominate William P. Breen, of Fort Wayne.

Mr. Charles F. Remy: I nominate Mr. William A. Ketcham.

Mr. James W. Morrison: I nominate Mr. Harry C. Morrison, of Shelbyville.

The President: The nominees are Noble C. Butler, of Indianapolis; William P. Breen, of Fort Wayne; William A. Ketcham, of Indianapolis, and Harry C. Morrison, of Shelbyville. What is your pleasure, gentlemen?

Mr. Horace E. Smith: Mr. President, in the absence of more nominations—I understand that this number fills the board—I move that the secretary case the ballot of the association for the four members nominated, as members of the executive committee.

The motion was adopted.

The Secretary: I have the honor to report that Messrs. Butler, Breen, Ketcham and Morrison have received the unanimous vote of the association for members of the executive committee.

THE PRESIDENT: I declare the gentlemen named duly elected members of the executive committee for the ensuing year.

Gentlemen, is there anything further under the head of miscellaneous business?

MR. WILLIAM P. BREEN: Mr. President, there seems to be no more miscellaneous business to be considered here, and I therefore move that we now take a recess until three o'clock.

The motion prevailed, and the president declared a recess until three o'clock in the afternoon.

AFTERNOON SESSION.

MONDAY, February 4, 1901.

The association was called to order by the president, Mr. E. P. Hammond, as follows:

LADIES AND GENTLEMEN: We have assembled to celebrate the centennial anniversary of the ascension of John Marshall to the supreme court of the United States as chief justice. Disappointments are seldom as serious as they are first taken to be, and so it is on this occasion. We had expected General John C. Black, of Illinois, with us to deliver an oration, but at a very late hour we were advised that, on account of sickness, he could not be here. His place, however, has been well supplied, and you will hear an oration that will do justice, as far as justice can be done by one man, of so great a man as John Marshall, in the oration which you will hear this afternoon. I have the pleasure of introducing to you Honorable William A. Ketcham, who will deliver the oration on this occasion.

MR. WILLIAM A. KETCHAM said:

Mr. President, Members of the Bar Association, Ladies and Gentlemen: Before turning to my paper, I desire to make an announce-

ment that will be especially pleasing to those members of the American Bar Association that have had the privilege of attending the meetings at Saratoga and Buffalo in the last three years. I have received this telegram: "William A. Ketcham, Indianapolis—Illinois sends greeting to Indiana. The American bench and bar are united in one common brotherhood on this historic day. Adolph Moses, Chairman Associated Committees of Illinois, John Marshall Day, 1901."

About half a century ago, when the land was in mourning and Dartmouth College had arranged to celebrate at its commencement the memory of Daniel Webster, its foremost alumnus, who loved his college and whose college worshiped him, it had been arranged that Senator Choate was to deliver the eulogy at the commencement, but at the last moment he was detained by an important trial in court, and the Dartmouth alumni, going up on the train, were discussing among themselves who was to fill his place, and that genial and witty poet of Boston, Oliver Wendell Holmes, to whom that duty had been assigned, said that it was not possible to fill Mr. Choate's place, but that he was intending to rattle around in it. It would not be possible for me to fill the place of General Black, but, to the best of my ability, I will "rattle around in it," and you should bear in mind that, however greatly you may be disappointed at the substitution of the orators, your disappointment is no greater than the embarrassment of the man who is asked to rattle around in another man's place.

THE CHIEF JUSTICE.

To-day, throughout the length and breadth of the land, the reverberations from the guns of bench and bar in honor of the centennial anniversary of the accession to the supreme court of the United States by its great chief justice will be listened to by the lawyers and judges throughout the country. I deem it an especial privilege, even as a substitute, to be permitted to contribute my mite to that universal celebration.

The United States has had, to adorn and honor its great court, great chief justices. It has had its Jay, its Ellsworth, its Taney, its Chase, its Waite, and has its Fuller, but the subject of this paper was not simply *par inter pares,* but *facile princeps.* He was preeminently *the* chief justice; worthy to rank worthily alongside of the great justices of England, the Eldons, the Ellenboroughs, the Mansfields, who shed lustre on and added fame to the jurisprudence of England.

John Marshall was born in Fauquier county, Virginia, September 24, 1755, one of fifteen arrows in the bountiful quiver of Thomas and Mary Marshall.

1. THE SOLDIER.

At the age of nineteen he was first lieutenant in a company of Virginia minute men; at the age of twenty was commissioned first lieutenant in the Eleventh regiment of the Continental establishment, of which his father was then major and afterwards colonel; at the age of twenty-one he was promoted to a captaincy, participated in the battles of the Brandywine, Germantown, and Monmouth and endured the hardships of Valley Forge. In this service

he made the acquaintance of General Washington, and probably of Colonel Hamilton, his senior in rank but junior in years. In the winter of 1779, there being proportionately more officers than men in the Virginia line—not an infrequent occurrence when wars become protracted—he was, with others, ordered home to take charge of such men as the state legislature might raise for their command.

In this interval of military inactivity he attended the course of law lectures at William and Mary's College, and thus afforded a practical doubt, if not refutation, of the adage, *"inter arma, silent leges."*

In October, 1780, he returned to the army and continued in active service until after the termination of Arnold's invasion of Virginia, when "the pennyworth of bread" in the shape of enlisted men "to the intolerable deal of sack" in the line of officers induced him to resign and devote himself to the study of his future profession.

2. THE STATE LEGISLATOR.

In the spring of 1782, and again in 1784, in 1787, and in 1795, he was elected a member of the legislature, and in his legislative career was confronted with all the perplexing political questions which then agitated his native state, and in the fall of 1782 became a member of the state executive council, which position he held until the spring of 1784, when he resigned his seat in order to devote himself more exclusively to the practice of law.

3. MEMBER OF VIRGINIA CONVENTION.

He was chosen a member of the convention of Virginia, called to deliberate upon the ratification of the United States constitution, although he was known to be in favor of its ratification and a majority of the voters of the county were known to be opposed. This was not, however, an instance of the men "in favor of the Maine law, but agin' its enforcement," but was a strong instance of his personal popularity with the voters and the high confidence enter-

tained by them in him, or, as he himself put it, "parties had not yet become so bitter as to extinguish the private affections."

4. IN CONGRESS.

From 1788 to 1792, at the earnest solicitation of his friends, he served in the congress of the United States, but in the latter year retired to devote his time to his profession. Again, upon the personal appeal made to him upon his return from France by General Washington, and in deference to his wishes, he became a candidate for congress, was elected, and took his seat in December, 1799, which he held and filled until he took his seat in May following in President Adams' cabinet.

5. AS FOREIGN MINISTER.

Upon the recall of Mr. Monroe as minister to France, he was solicited to take the appointment as Monroe's successor, but the appointment was declined because of its interference with his practice, but, the French government having refused to receive General Pinckney, who had been appointed, the president named General Pinckney, Mr. Gerry and Mr. Marshall as envoys extraordinary to the court of France, and this appointment, under the circumstances, could not well be declined or refused.

6. AS CABINET OFFICER.

In 1796, President Washington tendered him the position of attorney-general, which, however, he declined—"A thing that's nowadays not understood;" think of Mr. Overstreet or the minister to Austria declining the position of attorney-general in William McKinley's cabinet.

In May, 1800, President Adams, without any communication with him, appointed him secretary of war, but, before he entered upon the duties of his office, appointed him secretary of state, which place he filled until and after he was appointed chief justice.

7. AS HISTORIAN.

Upon the death of Washington, he undertook, in connection with the relative of the dead president, the Hon. Bushrod Washington, the compilation and preparation of his history.

8. AS LAWYER.

From the time of his admission to the bar, in 1782, until his appointment to the bench, in 1801, a period of nineteen years, with the breaks occasioned by the important public positions that I have recounted, he was engaged in the active, vigorous and successful practice of law.

9. AS JUDGE.

In 1798 President Adams offered him the seat on the supreme bench made vacant by the death of Mr. Justice Iredell, which he, however, declined, and Mr. Washington was appointed to the place.

Upon the retirement of Mr. Ellsworth he was, January 31, 1801, appointed by President Adams as chief justice of the supreme court, was unanimously confirmed by the senate, and took his seat February 4, 1801, where he continued to serve until his death, July 6, 1835, over thirty-four years.

The roll is a long, an honorable, an illustrious one: Soldier, patriot, legislator, diplomat, statesman, lawyer, historian, judge. There was but one other step possible for him to take, and, looking back over the many and glorious years in these various positions, it is not at all certain that, if he had taken that last and higher step, it could have added aught to the glory or fame of his career.

As a young man, in the formative period of his career, he was put to that test of battle and learned, not only what it was to think and write and talk for his country, but also to fight for her, and this love of country, emphasized and burned in, if not born on the battle-field, always remained a potential factor in his career.

I know of no better school in which to learn the lesson of divine

love for country than in march, in camp and on the field of battle. The flag, rising and falling on the perilous edge of battle, has a new meaning. The stars, shining in the fringe of steel bayonets, and the stripes, rising and falling in the smoke of conflict, give to the soldier a memory that no other experience can afford. And so, while as a soldier he was on a par in achievement and fame with the numberless many that had similar experiences, his mind was, by these very experiences, fitted and prepared for the great duties that were to come upon him thereafter.

As a lawyer, he was trained and skilled in the technical requirements of the profession. To one who is deeply wedded to his profession, it is scant comfort to know how small a place in the world's history the mere lawyer fills. While he is in the active and vigorous prosecution of his profession, he may fondly hope that he is making a name and a place that will live, but when age or infirmity comes he realizes sadly that it is mere *"stat nominis umbra."* The world passes by him and is, perhaps, neither better nor worse for his having lived. Who, except the few who follow the history of the lawyer to-day, recalls anything of Rufus Choate, in his day one of the foremost, if not the foremost, lawyers at the bar, except the bitter gibes of Boston and its thieves flung at him by Wendell Phillips.

While, when engaged in the active profession, Mr. Marshall stood at the very front of the bar of Richmond, the records of the supreme court of the United States show that, although the court was organized in 1789, during the entire period intervening between the organization of the court and his accession to the office of chief justice, he appeared before it in but one case (*Ware, Adm'r,* v. *Hylton et al.,* 3 Dallas 199) and failed in that. This was, doubtless, accounted for largely by the fact that his services were in constant demand in his own locality and that he could not spare the time to make the journey in any ordinary case from Richmond to Philadelphia. From 1861 to 1865 it required four long years to make the trip from Washington to Richmond, and it was impossible to make

the trip from Richmond to Washington even in that time. The trip from Richmond to Philadelphia was not quite as elaborate or difficult as later was the trip from Washington to Richmond, but it was enough. While, however, his fame as a lawyer has, in the passing years, sunk into comparative insignificance, the prompt, faithful and efficient performance of those duties was a magnificent education for the position which he was later to adorn.

As a historian he can not be said to have taken a front rank. The great research, the careful investigation which his volumes upon the life of Washington disclose have been a mine of wealth from which others have dug the materials that they have needed, but did not add to his fame. Indeed, he himself, in after years, is understood to have admitted as much. The first volume, containing the introduction and giving a resume of the history of the various colonies preceding the revolutionary war, is a model. How much of the volumes themselves were the actual work of Marshall I can not know. The title page, written by one who knew the use of exact and accurate language, says that it is "compiled under the inspection of the Hon. Bushrod Washington from original papers * * * to which is prefixed an introduction * * * by John Marshall." Whether the compiling was done by Marshall and the work by Washington, or the compilation was by Washington and the work by Marshall, it is difficult to say. The book itself does not bear internal evidence of the clearness and succinctness that appear in his judicial opinions, and how it was possible for a lawyer, between the death of Washington and the publication of the volumes, in the active practice of his profession, and doing so faithfully and well the work in the first few years on the bench, in a position novel to him, deciding questions that covered almost the entire range of human knowledge, to give to this work the time necessary to do justice to himself and his great subject is difficult of comprehension. One thing, however, is true, and that is that the insight which such labor imposed and conferred, into the great motives and great deeds

of him who was "first in war, first in peace, and first in the hearts of his countrymen" give a color and tinge to the banks through which the streams of judicial decisions were thereafter to flow that can hardly be sufficiently appreciated, and broadened and deepened the view of the great brain upon which this nation, its jurisprudence and its constitution were built.

As a member of the state legislature and of the executive council, there was brought to his mind and he was compelled to study and consider the wants, the aspirations, the objections and necessities of his native state and its relations with the general government which, supplemented by his service in the halls of congress, where he was bound to know the necessities of the nation and its comparative rights and requirements as against the state, placed him in a position in which he could accurately and clearly define the rights of the one without overlooking the powers of the other.

As a diplomat, while no treaty is written upon the statute books as an amendment to his achievement, his embarrassed attitude in connection with the French government, cooling his heels in antechambers, coming in contact with and sought to be played upon by the master liar of the age, Talleyrand; seeing the excesses, the vices, the weaknesses and tyrannies of French liberty, to a thoughtful, reflective and judicial mind furnished that knowledge that, viewing it from afar, could never have given to him and enriched his mind with a knowledge of the danger that might lie to a republic in the failure to discriminate between liberty and license, or in the worship of liberty gone mad.

As member of the cabinet, with a personal knowledge of the close and intimate relations between the president and his official family, and hence of the comparative rights, duties and obligations of the executive and legislative departments of the government, the knowledge which had theretofore been abstract became concrete and the statesman was, by his experience, fitted to become the judge and arbiter between the great departments of the government.

While, considered in each of these respective positions, Marshall was great and would have left his imprint upon the times, still, had his life ceased on the 31st of January, 1801, it is doubtful whether he would have been regarded as playing an important part in the history of his country. All of these were simply preparatory to the great field which was opened before him—the field of construction, definition and application of laws to rights, public and private; it was the great school in and through which he graduated into the higher seat upon the bench. They were the springs, the rivulets, the streams, the rivers, rising in the rocks of war, flowing through the meadows of peace, past the hamlets and cities of legislative experience, over the shoals and sands of controversy, until they emptied into the great ocean from which he drew his inspiration for his work upon the bench. Of all these positions, although they were filled well and honorably, it might truthfully be said, as was said of the French warrior who, after retiring from the profession of arms, devoted himself to the cultivation of and produced a new thing of beauty:

"Who is there now knows aught of his story?
What is left of him but a name?
Of him who shared in Napoleon's glory,
And dreamed that his sword had won him his fame!

Ah! the fate of a man is past discovering,
Little did Jacqueminot suppose,
At Austerlitz or Moscow's burning,
That his fame would rest in the heart of a rose!"

And Marshall's fame rests, and must rest, with a halo that will surround his name through all coming generations, so long as this nation and this constitution shall last, upon his decisions as chief justice of the supreme court of the United States, that fastened upon this people for all time that great instrument, of which Mr. Gladstone said: "As the British constitution is the most subtle organism which has proceeded from progressive history, so the Ameri-

can constitution is the most perfect work ever struck off at a given time by the brain and purpose of man."

In a sense, the judicial department is the weakest of the three into which American government is divided. It has neither the purse nor the sword. It has no appointive power, no patronage of office, and yet in a broader and truer sense it can be well said to hold its own with either of the other two.

"I knew a very wise man," said Andrew Fletcher of Saltoun, "that believed that if a man were permitted to make all the ballads, he need not care who should make the laws of a nation." And, in a sense, it is true that a court of last resort can say: "Give us the power to construe, to define, to overturn the acts of the legislative body of the nation, and it need not concern us very much what acts they pass." A law of congress or general assembly means what the court construing it says it means; neither more nor less. If the court say it is valid, it is valid. If the court say it is void, it isn't worth the waste paper that it is written upon. And in all legislative experience courts are to be reckoned with, for their say is the last.

The constitution was created by the great convention that met in Philadelphia and sat behind closed doors in 1787-88. The fifty-five men from the twelve states (Rhode Island refusing to participate), and there were giants in those days—Randolph, Washington, Mason, Wythe, Madison, Ellsworth, Sherman, Gerry, Livingston, Hamilton, Dickinson, the Martins, the Pinckneys, the Morrises, Wilson and Franklin—constituted a galaxy of brains, talent, patriotism and creative capacity that has never been surpassed in the history of the world, if it has been equaled. Jay, Hamilton and Madison, in the Federalist, construed and supported it. Webster, Wirt, Dexter, Pinckney, and Hopkinson argued it in the courts. Calhoun, Webster, Benton, Clay, and that wonderful coterie of distinguished statesmen that adorned the halls of congress when the century was yet young, debated, discussed and legislated concerning

it, but, after all, it was John Marshall, more than any man that ever lived, that made it, that is, told what it meant.

The constitution of the United States, notwithstanding all the claims as to how it marches on, and that this government is institutional rather than constitutional, as it left the pen and decree of John Marshall is substantially the constitution of this, the beginning of the twentieth century.

The first ten amendments, in the nature of a bill of rights, were adopted before he assumed the bench, and so nearly after the adoption of the constitution itself that they can fairly be said to be parts of the original constitution.

The eleventh amendment was proposed as the result of the decision of *Chisholm, Executor,* v. *Georgia,* 2 Dallas 419, and ratified by January, 1798.

The twelfth amendment, providing for the election of president and vice-president, was proposed within three years after his accession to the bench and ratified inside of four years. No amendment was thereafter sought to be made until the conclusion of the war of the rebellion, when the thirteenth, fourteenth, and fifteenth amendments were ratified between December, 1865, and March, 1870. Of these the thirteenth, abolishing slavery, was simply writing in words what had been theretofore written in bayonets and blood. The fourteenth and fifteenth, with possible exceptions for the protection of corporate capital, are largely obsolete. With the amendments to the state constitutions of the Carolinas, Mississippi, and Louisiana and the practical abrogation of their principal parts in the great portion of the country, acquiesced in by congress and the chief executive of the only party that ever believed in their enforcement, they may be well said to have become, in principle and historically, a thing of the past.

In the Slaughter-House Cases in 16 Wallace, Mr. Justice Miller, the Coeur de Leon of the supreme court in these later years, speak-

ing of the provisions of the fourteenth amendment, said, at page 81 of 16 Wallace:

"In the light of the history of these amendments, and the pervading purpose of them, which we have already discussed, it is not difficult to give a meaning to this clause. The existence of laws in the states where the newly emancipated negroes resided, which discriminated with gross injustice and hardship against them as a class, was the evil to be remedied by this clause, and by it such laws are forbidden. * * *

"We doubt very much whether any action of a state, not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview of this provision. It is so clearly a provision for that race and that emergency that a strong case would be necessary for its application to any other."

Mr. Justice Matthews, in a carefully considered opinion, speaking for that court, said that it was not to be construed as "a harbor of refuge for distressed or insolvent corporations." While the views of Mr. Justice Miller have not turned out to be entirely true, and resort has been made to that great court for relief by others than the colored race under the fourteenth amendment, few and far between have been the cases in which the relief asked for has been granted, and it is practically true that the constitution of to-day is the constitution as Marshall left it in 1835.

During the years that intervened between 1801 and 1835, many and great were the cases that came before that great court for consideration. It is not possible, within the limits of a paper that anyone would tolerate to listen to, to even call the roll of the great cases in which the chief justice rendered the opinion, but any paper upon this subject would be incomplete that did not give in his own exact phraseology his methods of arriving at the conclusion which the court announced.

The feeling between Mr. Marshall and that other great Virginian,

Thomas Jefferson, was not specially friendly, nor were the relations between the retiring and the incoming president in 1801 any more cordial or pleasant. In the expiring hours of the federalist domination, Mr. Adams had nominated a number of officers for the District of Columbia. Their nomination had been approved and confirmed by the senate. Mr. Marshall, who, although chief justice, continued to act as secretary of state until midnight of the 4th of March, 1801, had an actual personal knowledge of these transactions. He was succeeded by Mr. Lincoln at midnight of March 4, who acted as *ad interim* secretary of state until Mr. Madison was confirmed as the secretary of state for Mr. Jefferson. In the closing hours of Mr. Adams' administration, in some manner, these commissions, although signed and the great seal attached, had not been actually delivered, and after the death of the old king and the new king had been received with hosannas of praise, the parties entitled to these commissions found that the secretary of state would not deliver them, and an application was made in the supreme court of the United States, in the case of *Marbury* v. *Madison,* for a mandate to compel the secretary of state to deliver the muniments of title, and the questions presented were:

1. Were the petitioners entitled to their commissions; and,

2. Was the act of congress, conferring upon that court, as a part of its original jurisdiction, the power to issue writs of mandate, constitutional.

The facts, out of which these questions arose, were not new to the chief justice. Although he had been nominated, confirmed, and commissioned chief justice, he continued to act as secretary of state up to the last moment of Mr. Adams' term of office, and must have known of the appointment, commissioning, and affixing of the great seal to the commissions of the parties, and that their commissions were withheld by his successor.

A written constitution was unknown theretofore. It was an unheard of thing that a court should hold an act of parliament invalid

because in opposition to the British constitution, and for the first time the question was carefully considered as to the power and duty of a court to stand between congress and the fundamental law of the land. Now that is not a matter of infrequent occurrence. Then it was novel and extraordinary. Upon this case the chief justice, in his opinion, spoke as follows (1 Cranch 163):

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court. * * *

"The government of the United States has been emphatically termed a government of laws and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right.

"If this obloquy is to be cast on the jurisprudence of our country, it must arise from the peculiar character of the case. * * *

"By the constitution of the United States, the president is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience. To aid him in the performance of these duties, he is authorized to appoint certain officers, who act by his authority and in conformity with his orders.

"In such cases their acts are his acts; and, whatever opinion may be entertained of the manner in which executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political. They respect the national, not individual rights, and, being intrusted to the executive, the decision of the executive is conclusive. * * *

"But when the legislature proceeds to impose on that officer other duties; when he is directed peremptorily to perform certain acts;

when the rights of individuals are dependent on the performance of those acts, he is so far the officer of the law, is amenable to the laws for his conduct, and can not at his discretion sport away the vested rights of others.

"The conclusion from this reasoning is that, where the heads of departments are the political or confidential agents of the executive, merely to execute the will of the president, or, rather, to act in cases in which the executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable. But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured has a right to resort to the laws of his country for a remedy.

"It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

"Between these alternatives there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

"If the former part of the alternative be true, then a legislative act contrary to the constitution is not law; if the latter part be true, then written constitutions are absurd attempts on the part of the people to limit a power in its own nature illimitable. * * *

"If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory, and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.

"It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

"So, if a law be in opposition to the constitution, if both the law and the constitution apply to a particular case, so that the court must either decide that case comformably to the law, disregarding the constitution, or comformably to the constitution, disregarding the law, the court must determine which of these conflicting rules govern the case. This is of the very essence of judicial duty.

"If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.

"Those, then, who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law."

This doctrine would subvert the very foundation of all written constitutions. It would declare that an act, which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that, if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

In 1810, the case of *Fletcher* v. *Peck,* 6 Cranch 87, came before the court. Georgia had made disposition of certain unappropriated lands. Subsequently the legislature, claiming that the original act

had been procured by fraud and corruption, had repealed the law, and its right so to do under the constitutional provision forbidding a state to impair the obligations of a contract and the power of a court to investigate the motives of legislators was presented. Upon this latter question the chief justice said:

"That corruption should find its way into the governments of our infant republics, and contaminate the very source of legislation, or that impure motives should contribute to the passage of a law, or the formation of a legislative contract, are circumstances most deeply to be deplored. How far a court of justice would, in any case, be competent, on proceedings instituted by the state itself, to vacate a contract thus formed, and to annul rights acquired under that contract, by third persons having no notice of the improper means by which it is obtained, is a question which the court would approach with much circumspection. It may well be doubted how far the validity of a law depends upon the motives of its framers, and how far the particular inducements, operating on members of the supreme sovereign power of a state, to the formation of a contract by that power, are examinable in a court of justice. If the principle be conceded, that an act of the supreme sovereign power might be declared null by a court, in consequence of the means which produced it, still would there be much difficulty in saying to what extent those means must be applied to produce this effect. Must it be direct corruption, or would interest or undue influence of any kind be sufficient? Must the vitiating cause operate on a majority, or on what number of the members? Would the act be null, whatever might be the wish of the nation, or would its obligation or nullity depend upon the public sentiment?

"If the majority of the legislature be corrupted, it may well be doubted whether it be within the province of the judiciary to control their conduct, and if less than a majority act from impure motives, the principle by which judicial interference would be regulated is not clearly discerned. * * *

"It would be indecent in the extreme, upon a private contract between two individuals, to enter into an inquiry respecting the corruption of the sovereign power of a state. If the title be plainly deduced from a legislative act, which the legislature might constitutionally pass, if the act be clothed with all the requisite forms of a law, a court, sitting as a court of law, can not sustain a suit brought by one individual against another, founded on the allegation that the act is a nullity, in consequence of the impure motives which influenced certain members of the legislature which passed the law."

And at p. 336: "The validity of this rescinding act, then, might well be doubted were Georgia a single sovereign power. But Georgia can not be viewed as a single, unconnected sovereign power, on whose legislature no other restrictions are imposed than may be found in its own constitution. She is a part of a large empire; she is a member of the American Union; and that nation has a constitution, the supremacy of which all acknowledge, and which imposes limits to the legislatures of the several states, which none can claim a right to pass."

In 1819, the power of the state of Maryland to tax the branch of the Bank of the United States located in that state came up for decision upon writ of error to the supreme court of Maryland in the case of *McCulloch* v. *The State of Maryland et al.*, 4 Wheaton 316, in which, among other things, the chief justice said, at p. 400:

"The constitution of our country, in its most interesting and vital parts, is to be considered; the conflicting powers of the government of the Union and of its members, as marked in that constitution, are to be discussed, and an opinion given, which may essentially influence the great operations of the government. No tribunal can approach such a question without a deep sense of its importance and of the awful responsibility involved in its decision. But it must be decided peacefully or remain a source of hostile legislation, perhaps of hostility of a still more serious nature; and if it is to be

so decided, by this tribunal alone can the decision be made. On the supreme court of the United States has the constitution of our country devolved this important duty."

At p. 402: "In discussing this question, the counsel for the state of Maryland have deemed it of some importance, in the construction of the constitution, to consider that instrument not as emanating from the people, but as the act of sovereign and independent states. The powers of the general government, it has been said, are delegated by the states, who alone are truly sovereign; and must be exercised in subordination to the states, who alone possess supreme dominion.

"It would be difficult to sustain this proposition. The convention which framed the constitution was, indeed, elected by the state legislatures. But the instrument, when it came from their hands, was a mere proposal, without obligation, or pretensions to it. It was reported to the then existing congress of the United States, with a request that it might be 'submitted to a convention of delegates, chosen in each state by the people thereof, under the recommendation of its legislature for their assent and ratification.' This mode of proceeding was adopted, and by the convention, by congress, and by the state legislatures, the instrument was submitted to the people. They acted upon it, in the only manner in which they can act safely, effectively, and wisely, on such a subject, by assembling in convention. It is true, they assembled in their several states; and where else should they have assembled? No political dreamer was ever wild enough to think of breaking down the lines which separate the states and of compounding the American people into one common mass. Of consequence, when they act, they act in their states. But the measures they adopt do not, on that account, cease to be the measures of the people themselves, or become the measures of the state governments.

"From these conventions the constitution derives its whole authority. The government proceeds directly from the people; is 'or-

dained and established' in the name of the people; and is declared to be ordained 'in order to form a more perfect union, establish justice, insure domestic tranquillity, and secure the blessings of liberty to themselves and to their posterity.' The assent of the states, in their sovereign capacity, is implied in calling a convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it; and their act was final. It required not the affirmance, and could not be negatived, by the state governments. The constitution, when thus adopted, was of complete obligation, and bound the state sovereignties. * * * "

And at p. 405: "If any one proposition could command the universal assent of mankind, we might expect it would be this: That the government of the Union, though limited in its powers, is supreme, within its sphere of action. This would seem to result necessarily from its nature. It is the government of all; its powers are delegated by all; it represents all, and acts for all. Though any one state may be willing to control its operations, no state is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason; the people have, in express terms, decided it by saying: 'This constitution and the laws of the United States, which shall be made in pursuance thereof,' 'shall be the supreme law of the land,' and by requiring that the members of the state legislatures and the officers of the executive and judicial departments of the states, shall take the oath of fidelity to it."

At p. 407: "Although, among the enumerated powers of government, we do not find the word 'bank' or 'incorporation,' we find the great powers to lay and collect taxes, to borrow money, to regulate commerce, to declare and conduct a war, and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are intrusted to its government. It can never be pretended that these vast powers draw after them others of inferior importance,

merely because they are inferior. Such an idea can never be advanced. But it may, with great reason, be contended that a government, entrusted with such ample powers, on the due execution of which the happiness and prosperity of the nation so vitally depends, must also be entrusted with ample means for their execution. The power being given, it is the interest of the nation to facilitate its execution. It can never be their interest, and can not be presumed to have been their intention, to clog and embarrass its execution by withholding the most appropriate means."

At p. 408: "Can we adopt that construction (unless the words imperiously require it) which would impute to the framers of that instrument, when granting these powers for the public good, the intention of impeding their exercise by withholding a choice of means? If, indeed, such be the mandate of the constitution, we have only to obey; but that instrument does not profess to enumerate the means by which the powers it confers may be executed; nor does it prohibit the creation of a corporation, if the existence of such a being be essential to the beneficial exercise of those powers. It is, then, the subject of fair inquiry, how far such means may be employed.

"It is not denied that the powers given to the government imply the ordinary means of execution. That, for example, of raising revenue and applying it to national purposes, is admitted to imply the power of conveying money from place to place, as the exigencies of the nation may require, and of employing the usual means of conveyance. But it is denied that the government has its choice of means, or that it may employ the most convenient means, if, to employ them, it be necessary to erect a corporation. * * *

"The government which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select any appropriate means, that one

particular mode of effecting the object is excepted, take upon themselves the burden of establishing that exception."

At p. 415: "The subject is the execution of those great powers on which the welfare of a nation essentially depends. It must have been the intention of those who gave these powers to insure, as far as human prudence could insure, their beneficial execution. This could not be done by confining the choice of means to such narrow limits as not to leave it in the power of congress to adopt any which might be appropriate and which were conducive to the end. This provision is made in a constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs. To have prescribed the means by which government should, in all future time, execute its powers, would have been to change entirely the character of the instrument and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can best be provided for as they occur. To have declared that the best means shall not be used, but those alone without which the power given would be nugatory, would have been to deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances."

At p. 419: "But the argument which most conclusively demonstrates the error of the construction contended for by the counsel for the state of Maryland, is founded on the intention of the convention, as manifested in the whole clause. To waste time and argument in proving that, without it, congress might carry its powers into execution, would be not much less idle than to hold a lighted taper to the sun."

At p. 421: "We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect

to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."

At p. 424: "No trace is to be found in the constitution of an intention to create a dependence of the government of the Union on those of the states, for the execution of the great powers assigned to it. Its means are adequate to its ends; and on those means alone was it expected to rely for the accomplishment of its ends. To impose on it the necessity of resorting to means which it can not control, which another government may furnish or withhold, would render its course precarious, the result of its measures uncertain, and create a dependence on other governments, which might disappoint its most important designs, and is incompatible with the language of the constitution. * * *

"That the power of taxation is one of vital importance; that it is retained by the states; that it is not abridged by the grant of a similar power to the government of the Union; that it is to be concurrently exercised by the two governments, are truths which have never been denied. But such is the paramount character of the constitution that its capacity to withdraw any subject from the action of even this power is admitted. The states are expressly forbidden to lay any duties on imports or exports, except what may be absolutely necessary for executing their inspection laws. If the obligation of this prohibition must be conceded—if it may restrain a state from the exercise of its taxing power on imports and exports—the same paramount character would seem to restrain, as it certainly may restrain, a state from such other exercise of this power, as is in its nature incompatible with and repugnant to the constitutional

laws of the Union. A law absolutely repugnant to another, as entirely repeals that other as if express terms of repeal were used.

"On this ground the counsel for the bank place its claim to be exempted from the power of a state to tax its operations. There is no express provision for the case; but the claim has been sustained on a principle which so entirely pervades the constitution, is so intermixed with the materials which compose it, so interwoven with its web, so blended with its texture, as to be incapable of being separated from it without rending it into shreds.

"This great principle is, that the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective states, and can not be controlled by them. From this, which may be almost termed an axiom, other propositions are deduced as corollaries, on the truth or error of which, and on their application to this case, the cause has been supposed to depend. These are: 1. That a power to create implies a power to preserve. 2. That a power to destroy, if wielded by a different hand, is hostile to, and incompatible with, these powers to create and to preserve. 3. That where this repugnancy exists, that authority which is supreme must control, not yield, to that over which it is supreme. * * *

"That the power of taxing it (the bank) by the states may be exercised so as to destroy it, is too obvious to be denied. But taxation is said to be an absolute power, which acknowledges no other limits than those expressly prescribed in the constitution, and like sovereign power of every other description, is intrusted to the discretion of those who use it. But the very terms of this argument admit that the sovereignty of the state, in the article of taxation itself, is subordinate to, and may be controlled by, the constitution of the United States. How far it has been controlled by that instrument must be a question of construction. * * * It is of the very essence of supremacy to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments

as to exempt its own operations from their own influence. This effect need not be stated in terms. It is so involved in the declaration of supremacy, so necessarily implied in it, that the expression of it could not make it more certain."

At p. 429: "All subjects over which the sovereign power of a state extends are objects of taxation; but those over which it does not extend are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident.

"The sovereignty of a state extends to everything which exists by its own authority, or is introduced by its permission; but does it extend to those means which are employed by congress to carry into execution powers conferred on that body by the people of the United States? We think it demonstrable that it does not. Those powers are not given by the people of a single state. They are given by the people of the United States, to a government whose laws, made in pursuance of the constitution, are declared to be supreme. Consequently the people of a single state can not confer a sovereignty which will extend over them.

"If we measure the power of taxation residing in a state by the extent of sovereignty which the people of a single state possess, and can confer on its government, we have an intelligible standard, applicable to every case to which the power may be applied. We have a principle which leaves the power of taxing the people and property of a state unimpaired; which leaves to a state the command of all its resources, and which places beyond its reach all those powers which are conferred by the people of the United States on the government of the Union, and all those means which are given for the purpose of carrying those powers into execution. We have a principle which is safe for the states, and safe for the Union. We are relieved, as we ought to be, from clashing sovereignty; from interfering powers; from a repugnancy between a right in one government to pull down what there is an acknowledged right in another to build up; from the incompatibility of a right in one government

to destroy what there is a right in another to preserve. We are not driven to the perplexing inquiry, so unfit for the judicial department, what degree of taxation is the legitimate use, and what degree may amount to the abuse of the power. The attempt to use it on the means employed by the government of the Union, in pursuance of the constitution, is itself an abuse, because it is the usurpation of a power which the people of a single state can not give."

In 1824, the question of the power of the states to control navigation was presented in the supreme court upon a writ of error to the court of New York, in *Gibbons* v. *Ogden,* 9 Wheaton 1. In the course of the opinion the chief justice said, on p. 186:

"The state of New York maintains the constitutionality of these laws, and their legislature, their council of revision, and their judges have repeatedly concurred in this opinion. It is supported by great names—by names which have all the titles to consideration that virtue, intelligence and office can bestow. No tribunal can approach the decision of this question without feeling a just and real respect for that opinion which is sustained by such authority; but it is the province of this court, while it respects, not to bow to it implicitly; and the judges must exercise, in the examination of the subject, that understanding which Providence has bestowed upon them, with that independence which the people of the United States expect from this department of the government.

"As preliminary to the very able discussion of the constitution which we have heard from the bar, and as having some influence on its construction, reference has been made to the political situation of these states, anterior to its formation. It has been said that they were sovereign, were completely independent, and were connected with each other only by a league. This is true. But when these allied sovereigns converted their league into a government, when they converted their congress of ambassadors, deputed to de-

liberate on their common concerns, and to recommend measures of general utility, into a legislature, empowered to enact laws on the most interesting subjects, the whole character in which the states appear underwent a change, the extent of which must be determined by a fair consideration of the instrument by which the change was effected.

"This instrument contains an enumeration of powers expressly granted by the people of their government. It has been said that these powers ought to be construed strictly. But why ought they to be so construed? Is there one sentence in the constitution which gives countenance to this rule? In the last of the enumerated powers, that which grants, expressly, the means for carrying all others into execution, congress is authorized 'to make all laws which shall be necessary and proper' for the purpose. But this limitation on the means which may be used is not extended to the powers which are conferred; nor is there one sentence in the constitution which has been pointed out by the gentlemen of the bar, or which we have been able to discern, that prescribes this rule. We do not, therefore, think ourselves justified in adopting it. What do gentlemen mean by a strict construction? If they contend only against that enlarged construction, which would extend words beyond their natural and obvious import, we might question the application of the term, but should not controvert the principle. If they contend for that narrow construction which, in support of some theory not to be found in the constitution would deny to the government those powers which the words of the grant, as usually understood, import, and which are consistent with the general views and objects of the instrument; for that narrow construction, which would cripple the government, and render it unequal to the objects for which it is declared to be instituted, and to which the powers given, as fairly understood, render it competent; then we can not perceive the propriety of this strict construction, nor adopt it as a rule by which the constitution is to be expounded. As men whose intentions require

no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said. If, from the imperfection of human language, there should be serious doubts respecting the extent of any given power, it is a well settled rule that the objects for which it was given, especially when those objects are expressed in the instrument itself, should have great influence in the construction." * * *

"The subject to be regulated is commerce. And our constitution being, as was aptly said at the bar, one of enumeration, and not of definition, to ascertain the extent of the power it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term, applicable to many objects, to one of its significations. Commerce, undoubtedly is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive a system for regulating commerce between nations which shall exclude all laws concerning navigation, which shall be silent on the admission of the vessels of the one nation into the ports of the other, and be confined to prescribing rules for the conduct of individuals, in the actual employment of buying and selling, or of barter."

At p. 196: "The power to regulate (commerce); that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the constitution. These are expressed in plain terms, and do not affect the questions which arise in this case, or

which have been discussed at the bar. If, as has always been understood, the sovereignty of congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several states, is vested in congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States. The wisdom and the discretion of congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied to secure them from its abuse. They are the restraints on which the people must often rely solely in all representative governments."

And at p. 221: "The court is aware that in stating the train of reasoning by which we have been conducted to this result, much time has been consumed in the attempt to demonstrate propositions which may have been thought axioms. It is felt that the tediousness inseparable from the endeavor to prove that which is already clear, is imputable to a considerable part of this opinion. But it was unavoidable. The conclusion to which we have come depends on a chain of principles which it was necessary to preserve unbroken; and, although some of them were thought nearly self-evident, the magnitude of the question, the weight of character belonging to those from whose judgment we dissent, and the argument at the bar, demanded that we should assume nothing.

"Powerful and ingenious minds, taking as postulates that the powers expressly granted to the government of the Union, are to be contracted by construction into the narrowest possible compass, and that the original powers of the states are retained, if any possible construction will retain them, may, by a course of well-digested, but refined and metaphysical, reasoning founded on these premises, explain away the constitution of our country and leave it a magnificent structure, indeed, to look at, but totally unfit for use. They

may so entangle and perplex the understanding as to obscure principles which were before thought quite plain, and induce doubts where, if the mind were to pursue its own course, none would be perceived. In such a case, it is peculiarly necessary to recur to safe and fundamental principles to sustain those principles, and, when sustained, to make them the tests of the arguments to be examined."

Did time permit, I would be glad to give extracts from the opinion of the chief justice in *Sturges* v. *Crowninshield,* 4 Wheaton 122, where the power of the state to pass a bankrupt law was decided, and *Osborn* v. *The United States Bank,* 9 Wheaton 738, where it was held that the United States court might in an equity suit, by injunction, restrain public officers of a state from destroying a franchise of the bank under a void law of the state, notwithstanding the state was the real party in interest; from *Handly's Lessee* v. *Anthony,* 5 Wheaton 374, where the jurisdiction of Virginia and Kentucky over the Ohio river was settled; *Weston* v. *Charleston,* 2 Peters 449, where it was held that neither the state nor any political subdivision of it might levy a tax upon the bonds of the United States; *Schooner Exchange* v. *McFaddon et al.,* 7 Cranch 116, where the question was presented of the right of the courts of this country to interfere with a public armed vessel of a foreign nation upon the claim that the vessel belonged to them and their title had been improperly divested; *Brown et al.* v. *Maryland,* 12 Wheaton 419, where the question was presented of the right of a state to levy a tax upon importations while remaining in the original packages; *Sexton* v. *Wheaton,* 8 Wheaton 229, where the relations between husband and wife were considered upon the charge that the wife had participated in the fraud upon her husband's creditors; *Loughborough* v. *Blake,* 5 Wheaton 317, where it was held that Congress had plenary power to levy taxes within the District of Columbia; *Cherokee Nation* v. *Georgia,* 5 Peters 1, where the doors of the United States courts were slammed in the face of the Indian; *Craig et al.* v. *Missouri,*

4 Peters 410, where it was held that certificates contemplated to be circulated as money, issued by Missouri, were unconstitutional; *American Insurance Co.* v. *Canter,* 1 Peters 511, where the court passed upon the power of congress to legislate in the territory of Florida, a matter of great interest at the present moment in these days of enlarged boundaries, enlarged responsibilities, and embarrassing complications; *Bank of the United States* v. *Planters' Bank of Georgia,* 9 Wheaton 904, where the court held that the fact that a state was the owner of stock in a corporation did not deprive the United States courts of jurisdiction, and that when a state accepted the position of a stockholder it abdicated its sovereignty; *In re The Antelope,* 10 Wheaton 66, where the courts considered and decided the morals and legal and international status of the slave trade; *Johnson* v. *McIntosh,* 8 Wheaton 543, where the court held that a title to lands derived solely from a grant made by an Indian tribe could not be recognized by the courts of the United States; *Worcester* v. *Georgia,* 6 Peters 515, where the court held that the acts of the state of Georgia, punishing a missionary for preaching to the Indians, with the permission of the president of the United States and the consent of the Cherokee nation, were unconstitutional, and the prisoner was ordered discharged; the great case of *Dartmouth College* v. *Woodward,* 4 Wheaton 518, cited, perhaps, more frequently than any other case that has appeared in the law books, where the sacredness of the rights of property devoted to eleemosynary and educational purposes was placed beyond the limits of the legislature of a state; but I am admonished that life is short, although this paper is long, and I feel that, while your charity would be great, it is not like that described by Paul, in that, while "it suffers long and is kind, it never faileth," and I must leave those cases, household words to every lawyer, to the curiosity of those who have a desire to investigate them.

John Marshall's brain and pen were as fertile and productive as were the loins of his father. Taking his seat upon the bench in

1801, he immediately assumed the reins and held them with an unfaltering hand until by death they fell from his nerveless grasp. During the six volumes of reports following his accession to the bench, from 1 to 7 Cranch, from 1801 to 1811, with scarcely an exception, and those apparently consisting of cases where he had been of counsel before his appointment, or his relations were such that he ought not to participate in the decision, every opinion was prepared and handed down by him.

Upon the accession of Mr. Justice Story to the supreme bench, in 1811, a new order seems to have obtained; thenceforth the other justices participated in the preparation and filing of separate opinions, but the great constitutional questions still fell to the chief justice.

Story, with his wide reading and great learning in the law, not only of his own tongue and land, but of other lands and tongues, enforced and enriched his opinions by copious references to and quotations from the authorities, but the chief justice seldom broke the current of his opinion with references to authorities; an occasional reference to Blackstone, an allusion to the principle established in a particular case, an occasional analysis of authorities supposed to be adverse to or in support of the principle that his own great court was announcing, was as far as he seemed to think it was necessary to go.

Law books were then rare, reports infrequent. In these latter days, when the West Publishing Company, The Lawyers' Coöperative Publishing Company, *et id omne genus,* not to speak of the forty-five states of the Union, are grinding out a fresh grist of new reports every few minutes; when law writers, with abundant law students in their offices to search out authorities with which to pad a new publication of the law of ———; when a goodly portion of a lawyer's time is spent in explaining that he will, perforce, endeavor to get along without the assistance of the invaluable publication that is urged upon him, the average practicing lawyer sighs for some incendiary Mohammedan, who should burn up all the law books—not

kill all the lawyers—and give us a fresh and a fair start in the making of jurisprudence. Oh, for the halcyon days of John Marshall, when a legal question might be argued upon principle and decided upon reason, without reference to whether the supreme court of Idaho, or of Florida, has given an opinion upon the question!

The literary field of a judge is somewhat circumscribed. Flights of fancy and imagination; soaring in the atmosphere and seeking the sun, not the sunlight; even the delicate exercise and play of humor, except in rare and occasional instances, constitute fields that are forbidden to him in the nature of things. Who would tolerate the spectacle of Judge Dowling reading an opinion from the supreme bench at its semi-annual open session, referring to the breaking of the day that

> "Night's candles are burnt out and jocund day
> Stands tiptoe on the misty mountain tops."

Or of Judge Monks, after attending one of the many functions in connection with the dedication of the Columbia Club, excusing the quality of his work by saying:

> "No sleep till morn, while youth and pleasure meet
> To chase the glowing hours with flying feet."

Or of Judge Baker opening a dissenting opinion with the expression:

> "Once more unto the breach, dear friends, once more."

When Mr. Justice Harlan, or some other learned justice, shall announce from his high court the constitutional limitations and the powers of congress over conquered and ceded territory in the Porto Rican cases, should he feel moved to emphasize and illustrate the added power and territory of this United States by speaking of it as a nation "whose morning drumbeat, following the sun and keeping company with the hours, circles the earth with one continuous and unbroken strain of the 'Star Spangled Banner,'" the

very foundations of the capitol would rock and sway under it, and the listeners would marvel at the strange and extraordinary spirit that had come over the supreme court of the United States and wonder if it were worth while to extend the territory and increase the power of the government at the expense of shocking all the traditions as to the judiciary and its methods of clothing its ideas into language.

The qualities of thought and language that are required from a judge are those of clearness, lucidity, logical arrangement, force, fairness, and honesty, and "whatsoever is more than these cometh of evil." While this is true, and while it is also true that Marshall never violated the traditions or went counter to the recognized literary limits as applied to the courts, his language was so chaste, so clear, so appropriate, so convincing, that his opinions have all the charms of a novel and his diction the beauty of a poem. They were made for a purpose, and that purpose was fully and completely carried out to every iota. Whether his views should have obtained, or those of the Jeffersons, Thomas or Davis, ought to have obtained (and it is not within the purview of this paper to enter into a discussion of that difference), he gave his views with a wealth of diction, a clearness and precision of statement, a dignity and character of patriotism that embedded them forever in the history of jurisprudence and made the constitution of the United States John Marshall's constitution. And generations yet unborn will bless his name and thank God for his work.

The President: Gentlemen of the association, I desire to announce that we have an invitation from the Woman's Suffrage Association, which is now holding a reception in the rooms upstairs, to give them a visit.

Mr. Timothy E. Howard: Mr. President, I think that the worthy gentleman who has addressed us this afternoon has done something more than to rattle around in General Black's shoes. I

wish, therefore, to offer the motion, and I do it with the greatest pleasure in this case, that the address to which we have listened be incorporated in our proceedings and published.

The motion, being duly seconded, was unanimously adopted.

THE PRESIDENT: Is there anything further? I hope that the audience will accept the invitation of the ladies of the Woman's Suffrage Association and meet with them upstairs.

On motion, the meeting adjourned.

In Memoriam

ROBERT C. BELL.

PREPARED BY WILLIAM P. BREEN.

Robert C. Bell was the son of a sturdy family, sprung from the soil of the Old Dominion, the mother of statesmen and great men. They were Virginians of Virginians, the Bells, and in his character were found all of the traits that made the men of his ancestral state the strong men of the nation. Robert's grandfather, John Bell, was a soldier in the war of 1812, and had a prominent part in that struggle with England. He was a member of one of the most prominent families of Virginia. In his military career he learned to love the boundless prairies of what was then known as the far west, and after his muster out, after the declaration of peace, he settled in Kentucky. Here, in "the dark and bloody ground," he reared a family and laid the groundwork of the character that was to descend to his posterity. His son, Hiram Bell, was born at Maysville, Ky., and moved to Decatur county, Ind., in 1842. He became one of the prosperous farmers of that section. He lived there until 1879, when he met his death by an accident. His wife was Mary J. Clark, a native of Lexington, Ky. Her father, Woodson Clark, was the founder of Clarksburg, Ind., to which point he immigrated in 1820, and was long one of the leading men of that part of the state.

At Clarksburg, on the 13th of July, 1844, was born Robert Clark Bell, one of a family of eleven children. He was reared on the

parental homestead and his boyhood was much the same as that of the ordinary American boy. His parents were above the ordinary in intellect, and young Robert's education, obtained in the crude schools of the period, was supplemented by the association of his elders, who ranked superior to their neighbors in mental qualifications and attainments. After leaving the district schools, he pursued an academic course, preparatory to his collegiate studies, and in 1861 entered Ann Arbor University. He was graduated in the literary department five years later. His parents were not wealthy, and he had to depend mainly upon his own efforts to secure a superior education. Consequently, in the intervals between college terms, he taught school. So great was his application that, in addition to his regular course, and in his leisure hours, he studied law, and was admitted to the bar in 1867, a year before his graduation.

While pursuing his studies the civil war broke out, and in the hour of the nation's need his services were not withheld. In February, 1862, he organized a company of his fellow students and with them was mustered into the Eighth Indiana volunteer infantry. He saw active service for six months with his company, and was then transferred to the 124th Indiana regiment. His field service thereafter was brief, for his executive abilities were recognized by the corps commander and he was ere long assigned to detached duty and served at Nashville until the end of the war. He took particular pride in the first months of his service, however, for his command was made up of some of the brightest young men in the army. Of late years, in several conversations with the writer, referring to the war, he declared that he always believed the company he took into the field was the finest in the Union army. "Every man was a student, who left college at the call to arms," he would say, "and every man gave a good account of himself."

When the war closed he resumed his studies, which continued without interruption until his graduation from the law department of Ann Arbor University. He then located at Muncie and formed a

professional partnership with the Hon. Alfred Kilgore, one of the leading attorneys of Indiana. When that gentleman was appointed district attorney for Indiana, Mr. Bell served as his assistant with signal success.

He felt the need of a wider field for his abilities, and, in 1871, came to Fort Wayne and formed a partnership with the late John Colerick, which association was maintained until the latter's death. Then the firm of Coombs, Miller & Bell was formed. Upon the removal of Mr. Miller to Indianapolis, his place was taken by Judge John Morris, and the firm became known as Coombs, Bell & Morris. The title of Bell & Morris succeeded when Mr. Coombs retired, and later it became known as Morris, Bell, Barrett & Morris, Messrs. J. M. Barrett and S. L. Morris becoming members. This firm, known familiarly as the "Big Four," became recognized as one of the strongest in the state. Three years ago Mr. Bell retired and formed a partnership with Mr. N. D. Doughman, with whom he has since been associated.

Mr. Bell was recognized as one of the leading men at the Indiana bar. There were few—probably none—better equipped mentally and scholastically to win success, and he won it in generous measure. Always a student, he supplemented his liberal legal education with a lifetime of reading, and one of his strong characteristics as a practitioner was his thorough familiarity with and ready command of matters which, with most lawyers, even the best prepared, require a new schooling each time their use becomes necessary. He was a keen analyist, and the most complicated points of law were to him always ready and easy of solution. As a speaker he had few equals, and in the presentation of a case before a jury had no superiors. Thoroughness, conciseness, and the power of persuasion were his at all times, and these faculties, coupled with diligent application, made him a marked man in his profession. He was always successful, and his talents enabled him to live in modest affluence, once recognition had been won. His aid was sought in many difficult

cases, and he figured on one side or the other in most of the noted trials that have come before the bar of the state in the past score of years. His mastery of details, of what may be termed the small points of a case, but points upon which the whole value of a cause may depend, was one of his strongest characteristics. He could grasp all the salient features, consider all the little elements, without losing sight of the main question at issue.

Twenty years ago he was appointed counsel for the New York, Chicago & St. Louis Railway and held that position up to the time of his death. He also represented all the Vanderbilt interests—the Lake Shore and Lake Erie railroads—in northern Indiana, and his retention by these important corporations was not the least recognition of his abilities.

From a father who was a follower of Andrew Jackson, Mr. Bell inherited his political faith, and he never departed from it. Ardent study of economic theories made him a stronger democrat as the years passed, and his devotion to his party was as strong as his faith was abiding. From his earliest manhood he took an active part in the direction of the party, and his talents and attainments were of service in many a struggle. He rose to high eminence in democratic counsels, but was content with a modest recognition, although higher honors might have been his for the asking.

In 1872 he was appointed United States commissioner for this district, but resigned that position in 1874, upon his election to the state senate. He was chosen senator again in 1880, and during that session served in the most important chairmanship, that of the committee on judiciary.

No party movement in the state failed to find Mr. Bell enlisted. He was repeatedly elected a delegate to state conventions, often served as chairman of city and county conventions, and every campaign since he arrived at man's estate found him doing valiant service on the stump. He was a ready, fluent speaker, possessed a rich command of language; he was witty, picturesque, and always in-

teresting, and, perhaps, no man Allen county ever sent forth was a more valuable man to the party on the rostrum than he. Aside from his worth as an orator, he was a perfect organizer, and his counsel was always sought by the active managers of every campaign.

In 1884 he was a delegate-at-large for Indiana in the national democratic convention at Chicago, which nominated Grover Cleveland for the presidency the first time. In 1896, when the democratic party went on the rocks of free coinage, he was found battling for the principle that was the slogan during that memorable campaign. He was chairman of the state convention that year and his conduct of that notable gathering, with the eyes of all the nation upon it, made him doubly famous. It was a stormy meeting, for two factions, determined and able, were struggling for the mastery. Mr. Bell steered the convention through the surging current of conflicting elements and saw the principles he loved triumph, with the least possible danger to the party.

Mr. Bell believed that a man was never too old to learn. Consequently, he did not deem his education finished at graduation, and his whole life was a course of study. He was an omnivorous reader, and his acquaintance with the literature of all lands was thorough and comprehensive. He knew the classics as intimately as any man in Fort Wayne. His reading of standard authors was begun at an early age and continued through his whole life, and still he found time, amid the cares of a busy career, to keep up with the voluminous literature of the present day. His library was one of the finest in the state, and, perhaps, as a reference library, was not equaled by any in Fort Wayne. He possessed keen literary discrimination, and his book shelves were never burdened with what is commonly called written trash. His tastes led him to the selection of the best productions of the master minds of every age, and his success in his profession afforded him means to gratify them. His palatial home on West Wayne street was always a source of pride to

him, but to the visitors it was easily apparent that his handsome, comfortable library, with its well filled shelves, afforded him more real gratification than any of his worldly possessions.

Mr. Bell married, on April 15, 1868, Miss Clara E. Wolfe, daughter of Adam and Elizabeth Wolfe, prominent residents of Muncie, and in her found a companionship that helped him to enjoy to the utmost his tastes for the finer things of life. To enter their home was to know the acme of real hospitality and refined companionship. Mrs. Bell survives her husband.

Some years since Mr. Bell made a trip to Europe and toured the British isles and the continent. He was of an observing turn of mind and his scholarly instincts found in his travels ample food for study and afforded a fund of pleasure that after life never exhausted. He was an entertaining talker always, and to hear him converse upon European customs, peoples and scenes was instructive and interesting.

Exalted views of life, a mentality far above the average, an intelligent, logical way of viewing men and measures, a love of good things of whatever nature, brilliant conversational gifts, and a fund of that rich humor that is the spice of life—there you have the character of Robert C. Bell. The side of his nature that his friends saw was the most admirable. The scholar never passed from view, but the genial, kindly, whole-souled man of humor and good fellowship shone, and "Bob Bell" was loved by men of all degrees in life.

His death occurred at Fort Wayne, Indiana, on January 21, 1901.

WILLIAM PINCKNEY FISHBACK.

Born November 11, 1831. Died January 15, 1901.

The life which has just closed was an eventful one, eventful in itself and eventful in the times in which it was cast. The last half of the nineteenth century was full of change; up to his last hour William P. Fishback kept pace with its moral, political, and intellectual progress. Born in the town of Batavia, Clermont county, Ohio, he passed his youth in that place, and as a boy frequently visited Cincinnati when that city had no railroad. Going from the public schools of his home county to Miami University, in that institution he met and became the intimate friend of the young man who was afterwards to become his partner and later the president of the United States. When the president of Miami University became president of Farmers' College (now Belmont), Mr. Fishback followed him and graduated from Farmers' College in 1852. He was admitted to the bar in Ohio, and for a few years practiced law in that state, serving one term as prosecuting attorney of Clermont county. In 1857 he came to Indianapolis. In 1858 he was elected prosecuting attorney of the district, which was then made up of Marion and six other counties. In 1860 he was reëlected. His first law partnership in this state was with A. Hamilton Conner. This firm was dissolved in 1861, and the firm of Harrison & Fishback was formed. In a short time the firm became Porter, Harrison & Fishback, and so continued until 1870, when Mr. Fishback retired from the practice of the law to become a journalist. He was editor of the Indianapolis Journal and thereafter of the St. Louis Democrat. In 1874 Mr. Fishback came to Indianapolis and returned to the practice of the law as the junior member of the firm of Porter & Fishback. In 1877 Mr. Fishback was appointed clerk of the United States courts and master in chancery. He resigned the

clerkship in 1879 and continued to hold the position of master in chancery until his death.

Our dead brother was a many-sided man. For years he was one of the leaders of this bar, and that at a time when it numbered in its membership many able and brilliant lawyers. He was ever jealous for the honor and dignity of his profession. With something like scorn for the technicalities of the law, which are so often employed to defeat the ends of justice, he was deeply read in the science and philosophy of his profession. He was clear and cogent in argument, skillful in the management of his cases, and honest in his use of the facts. His lucidity of statement, which was so marked a characteristic of his literary style, served him well in the practice of his profession. He never betrayed a client, trifled with a jury, or deceived a court. His acute and vigorous mind made it easy for him to master legal principles and to grasp the significance of the most complicated facts. Believing that a lawyer owed a duty to society as well as to his special calling, he refused to limit himself within the boundaries of his profession. He felt, indeed, that a lawyer could not be a good lawyer unless he were first a good man and a good citizen. So Mr. Fishback took great interest in politics, in literature, and in social movements, and he adorned and illuminated every object with which he dealt. There was no man in this city who had read more widely than he had, or whose literary judgments were more trustworthy. He stood for the pure and elevated in literature and had nothing but contempt for those writers who pollute it. He had, indeed, a passion for clearness and purity. He was devoted to the classics and was a reverent follower of the great masters. There never was any doubt in his mind that the path to culture lay through classical rather than scientific study. A brilliant writer himself, he had a keen relish for style and an instinct for elegant and vigorous expression. As a talker, he has left behind him no equal in this city. His varied and accurate information, his acquaintance with the best that had been thought and said in the

world, his command of language, his fund of anecdote, his abounding humor, and shrewd and incisive wit all combined to make him a delightful associate. Mr. Fishback's independence of thought extended into the field of politics. Partisan though he was, he did not hesitate to rebuke his party or to speak his honest opinions when occasion seemed to require that he should do so. He was the friend of good causes and a leader in any movement that promised to serve the welfare of the people. He hated sham and cant and always endeavored to be honest with others and with his own conscience. His influence was always on the side of what he believed to be right. His nature was always on the side of what he believed to be right. His nature was kindly and his impulses were generous. He was interested in many things and many people. His mind was broad and tolerant and his affections responded promptly to any effort to engage them. And so he had many friends, as he deserved to have. His courage was often tried, and it never failed him. He faced the last crisis with uncomplaining fortitude and calm serenity. Though his fame did not travel far, it did strike deep. And we who knew him best, know best what in his death this town has lost. "A lawyer," says Sir Walter Scott, "without history or literature, is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect." Mr. Fishback was no mechanic in his profession, but he was an architect. The different domains of knowledge which he had made his own were all related, and each bore on and influenced the others. And we have faith to believe that his trained faculties and his great acquirements will be called into full play in that land to which he has gone. It can not be that such abounding life as that which throbbed in his frail body is forever stilled. To the afflicted and sorrowing members of his family we tender our sincerest sympathy and mourn with them the loss of him who was to us a loved associate and friend. Consolation will come in time from the consciousness of the esteem in which he was held by this community and from that faith to

which he adhered. We feel that his portion is not death, but that more abundant life which He, who was the Master of Life, came to the world to bestow on our infirm and mortal nature.

Byron K. Elliott.
John T. Dye.
Noble C. Butler.
George T. Porter.
Edward Daniels.

MAJOR CHARLES L. HOLSTEIN.

PREPARED BY JAMES B. BLACK.

Charles Louis Holstein was born at the city of Madison, Indiana, on the 26th of January, 1843. He died at his home in the city of Indianapolis on the 22d of January, 1901.

His father, a prosperous business man, emigrated from Germany in 1837. His mother, a native of Madison, was of French descent. After such education in his boyhood as the schools of his native city afforded, he entered Hanover College, near his home, in 1856, and pursued his studies there for two years. In 1858 he became a cadet of the Kentucky Military Institute at Frankfort, where, with high rank in his classes, he continued his educational course until, in his junior year, the coming on of the civil war caused a suspension of the institution.

In the spring of 1861 he enlisted under the first call of President Lincoln for volunteers, and on the 27th of April, 1861, as a deserved recognition of his military education, he was mustered into the service of the United States at Indianapolis as sergeant-major, the highest non-commissioned officer, of the Sixth regiment of Indiana Volunteers, the first Indiana regiment in that war. He took part with this command in the opening scenes of the war in West Vir-

ginia, and was mustered out on the 2d of August, 1861, by reason of the expiration of the term of enlistment.

On the 15th of July, 1861, he was commissioned as first lieutenant and adjutant of the Twenty-second regiment, Indiana Volunteers, then being organized, and was mustered into the service for three years with that regiment on the 15th of August, 1861, Jefferson C. Davis, then a captain in the regular army, being the colonel commanding.

When Colonel Davis was promoted to the rank of brigadier-general in December, 1861, he retained Lieutenant Holstein upon his staff as acting assistant adjutant-general. He was promoted by the president to the office of captain and assistant adjutant-general, United States Volunteers, on the 26th of August, 1862, having received a commission as major of the Twenty-second Indiana Volunteers, on which he declined to be mustered. He continued by preference to serve upon the staff of General Davis until the latter part of the year 1863, when, his health being affected, he resigned and returned to his home at Madison. He now resumed his studies and was graduated from Hanover College in 1865. He then became a student of the law and was graduated at the Law School of Harvard College. In 1866 he entered the law office of Hendricks, Hord & Hendricks at Indianapolis. In the autumn of 1868, he became a partner in the practice of law with Hon. Byron K. Elliott, upon whose election to a judgeship, Mr. Holstein for a time continued alone in the practice until, in August, 1871, he was appointed by the attorney-general of the United States as assistant to General Thomas M. Browne, district attorney of the United States for Indiana.

While continuing to hold this connection he, in January, 1874, became a partner with Hon. John Hanna and General Frederick Knefler in a law firm under the name of Hanna, Knefler & Holstein. His duties in connection with the celebrated Whisky Conspiracy cases became so exacting that he retired from that firm and

gave his whole time to the service of the general government. He continued in the position of assistant district attorney until the death of Colonel Nelson Trusler, district attorney, in February, 1880, when Mr. Holstein was appointed as his successor in office by President Hayes. He was continued in this office by President Arthur and until the change of administration in 1885. He then practiced his profession at Indianapolis for a time, and in 1887 he became a member of the law firm of Flower, Remy & Holstein at Chicago. In 1890 he severed that relation, returning to Indianapolis, where he continued to reside and practice law until his death.

On the 17th of December, 1868, he was married at Indianapolis to Miss Magdalena Nickum, who survives him.

He had not been in robust health for a considerable period, doubtless owing to some extent to lingering impairment of vitality from his military service, yet his fatal illness was of but a few weeks' duration.

In person, Mr. Holstein was tall and slender, of erect figure, with easy and graceful, but soldierly bearing; his eyes were bright with vivacity, intelligence and kindliness; his voice well modulated and persuasive. His manners, whether in forensic discussion or in conversation, were courteous and pleasing. In all his intercourse with others he won respect, confidence, and friendly regard. He was always and everywhere the cultured, refined and considerate gentleman, not merely formally polite, but truly a loving and lovable man. His acquaintance with people in the city of his residence and throughout the state was extensive, and he had hosts of personal friends, by whom he was highly prized for his amiability and courtesy and the habitual exhibition by him of all the elements of good social companionship. His friendship was unreserved and his devotion to his friends was not stinted by narrow carefulness for himself. He was a man of cheerful, genial disposition and sympathetic nature. All his impulses were pure and noble. He was indeed a man of charming personality.

All his life he was a student, a lover of books. He gave much time to general reading and was well acquainted with the best literature. He was an accomplished and graceful writer and a forceful speaker, and was in much demand upon occasions which offered opportunity for eloquent speech and the display of culture. His literary attainments were also illustrated by many articles published in leading magazines. His temperament and his taste were those of the poet, and, while nothing distracted him from needed labors for his clients, he indulged at his leisure in his natural inclination to express his beautiful thoughts and tender emotions in verse and was the author of many poems of such merit as to win the approval of competent critics, many of his best verses being suggestions of his military experience.

He was well educated in the science of the law and highly qualified for the practice of his profession, wherein he displayed skill without cunning, and zeal without sacrifice of dignity or lack of sincerity. With all his unruffled urbanity, he was courageous in the cause of his client, as he was brave in every other station of life.

Hon. John H. Baker, judge of the United States District Court, presiding at a meeting of the bar, called to honor the deceased lawyer, said of Major Holstein: "I regarded him always as a pure man, a sound lawyer, and a man in every way entitled to confidence and respect."

The spirit of patriotism, which in his boyhood took him into the long and sanguinary civil strife for the preservation of the nation, actuated him through all his later years. He estimated every public question or measure by its effect in a large way upon the welfare of his country.

In his political affiliations he was a republican and devoted his influence, his counsel, and his large abilities to the success of his party in many political campaigns, but he was never an uncharitable or inconsiderate partisan.

James Whitcomb Riley, who, for a long period, was an intimate

companion of Major Holstein and well qualified to speak of his personal qualities, has rendered tribute of highest praise to his departed friend, of whom he said: "His character abounded with the most delightful qualities. He was gentle, loving, mild, faithful to what he considered his duty always. * * * I believe the highest tribute to his actual worth will be found in the hearts of his comrades of the Grand Army of the Republic. The old boys knew him well; they knew him for a brave, patient, faithful friend." And the gifted author, who has added so much honor to the "Hoosier" state, has dedicated to his lost friend a beautiful poem, in which he commemorates "His Heart of Constant Youth," from which we may in this presence quote a stanza:

> "And ever young his reverence for
> The Laws; like morning dew
> He shone as counsel, orator
> And clear logician, too."

One of his highest claims to our sincere admiration, outshining the brightest intellectual brilliancy, and constituting the best adornment of men who join in the strenuous struggles of the bar, was his inborn and ever unimpeachable sense of honor. He was truly manly and so steadfast in this element of character that he was entirely incapable of the slightest meanness of purpose or conduct; never a malicious or scheming adversary, but ever a candid and chivalrous opponent. Conscious of the purity of his wishes and the rectitude of his designs, and through the whole course of life actuated by ardent ambition, measured by high standards, he was yet ever modest in asserting his claims to advancement, and such honors as he enjoyed in public life came to him through the notice his worthiness commanded, as unsought deserts.

He of heroic spirit, who, undaunted, had often faced death in the turmoil of battle, did not shrink or repine when, in the quietude of his chamber, conscious of his approaching dissolution, the forms of those he loved faded from his vision. He who had lived without

fear and without reproach ended as a true knight, passing from life with serenity, yielding with courageous endurance to the inevitable stroke.

Though not spared to old age, his life was one of usefulness and honor, and it is fitting that we who knew him best in his chosen profession, who are blessed by the ennobling influence of his character, and who will carry with us through our lives pleasant and tender memories of our intercourse with him, should testify in our permanent records to the grief we sincerely feel at his departure.

We may close this inadequate memorial with his own lines, part of a poem relating to a comrade lost in battle:

"Life is but losing—be it soon or late;
The foeman marked him with avenging eye.
Killed at the front! A man must face his fate;
The prize of battle is to grandly die."

JULIUS W. YOUCHE.

PREPARED BY JOHN H. GILLETT.

Julius W. Youche died at his home in Crown Point, Indiana, on the 2d day of January, 1901. He was born in Saxony in 1848, but practically his whole life was spent in Ohio and Indiana. His own exertions provided the means which enabled him to take and complete a course at the Indiana State University and also a law course at the University of Michigan. He was at one time the prosecuting attorney of the thirty-first judicial circuit; he represented his district in the state senate for one term, and for many years he was a trustee of the State University. That Mr. Youche held these offices is mentioned in a spirit of concession to the fact that his holding of these offices seem incidents ordinarily worthy of mention. Mr. Youche, however, although he was always in close touch with public affairs, was not a man who sought or desired public office. He pre-

ferred to build for himself a large law practice rather than to attain to a brilliant, but, perhaps, ephemeral, political career. It is but conservative statement to assert that, in some respects, he possessed a very great mind. His greatness lay in his faculty of analysis. He was a power on cross-examination, and, if it be true that a proposition well stated is half argued, then it is also true that few, if any, lawyers ever excelled him in the first half of an argument. He was not one of those lawyers of whom the Master said: "Ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers." For his fidelity to his clients was perfect. Indeed it might almost be said that he was faithful unto death, for it was the strain of a number of long lawsuits, ending in each instance with a nervous collapse, that seems to have caused his last illness.

But Mr. Youche deserves more mention than as a lawyer. He had a close and vital touch upon affairs, and there were not many things in heaven or earth that were not dreamt of in his philosophy. Moreover, he was a lover of nature, and a knowledge of all lakes, with the shadows of clouds and trees thereon, and of the bass beneath the covert of their pads; and of all mountains, together with their appurtenances of flowers, streams, gray rocks and ineffable visions; and of all woods, with their toadstools and festoons of moss and their bird and insect life, together with all sweet sounds and scenes in any wise appertaining to the woods, nature had given to Youche to be his. Carking professional cares never entirely loosed his hold on the out-door life of his boyhood, and he there found complete relaxation.

> "Tell Shakespeare to attend some leisure hour,
> For now I've business with this drop of dew,
> And see you not, the clouds prepare a shower,—
> I'll meet him shortly when the sky is blue."

Mr. Youche's character was not a faultless one. It would have given offense to his honor-loving, cant-despising spirit to indulge

in indiscriminate words of praise concerning him. But if he lays upon us by implication, as we feel he does, the obligation to under, rather than to over praise him, it is at least our right to withhold words and judgment concerning what he lacked.

"So many little faults we find,
We see them, for not blind
Is love. We see them; but if you and I
Perhaps remember them some by and by,
They will not be
Faults then—grave faults—to you and me,
But just odd ways—mistakes, or even less—
Remembrances to bless,
Days change so many things—yes, hours,
We see so differently in sun and showers,
Mistaken words to-night
May be so cherished by to-morrow's light,
We will be patient, for we know
There's such a little way to go."

THE ANNUAL DINNER

GIVEN AT THE COLUMBIA CLUB, FEBRUARY 4, AT EIGHT O'CLOCK, P. M.

SPEECHES.

Toastmaster, PRESIDENT EDWIN P. HAMMOND.

TOAST—"THE FEDERAL IDEA."

THE TOASTMASTER: We have a number of toasts this evening, and I am sorry to say there are quite a number of gentlemen who were selected quite a while ago to respond who will not be present, and we will have to call upon members present who may not be as well prepared as they would have been had they been selected sooner.

The first toast is "The Federal Idea." This is a good idea, and the learned gentleman who will speak upon this subject will present ideas which may conform to, or come in contact with, some of our ideas, but they will be happily and pleasantly presented. Honorable William A. Ketcham will respond to this toast. [Applause.]

RESPONSE.

MR. KETCHAM: Mr. Toastmaster, and gentlemen of the American Bar Association (I should say the Bar Association of Indiana), I have been sitting alongside of Mr. Chambers and I have acquired large ideas as the result of it [laughter]; but, after all, when you come to analyze,—and the legal mind is devoted to analysis,—when you get Chambers's ideas of a bar association, it is not different from the Indiana Bar Association. Now, gentlemen, I had my inning this afternoon, and I punished this association with an hour and a

half of good, solid talk. [Mr. Hawkins: "It was good."] There was no liquid talk about it, Mr. Hawkins. It is a question at this time of bringing solids and liquids into solid talk, and, as I say, I had my inning, and it is hardly fair to inflict me again upon a long-suffering bar association. But I understand that other gentlemen who have been down on the programme have become sick, they have the pneumonia or inflammatory rheumatism and they can not be here; therefore the gentleman from Marion county is asked to respond to the toast, "The Federal Idea."

A great many years ago, so many that with my mental arithmetic I am loath to figure it out, I remember when I was a sophomore in Wabash College, sixteen years of age, I was required to make a sophomore oration, and I was told it was to last ten minutes, and it seemed to me, at that time, that ten minutes was an awful long time to make a speech; but I had to make it what the rules required, and undertake the full limit; so I figured for some time on a subject that would last ten minutes, and I couldn't think of anything else but the "Thirty Years' War," and so I wrote a sophomore oration upon the subject of the "Thirty Years' War." I covered my ten minutes. I don't remember to this hour when, where, or what the Thirty Years' War was fought about, but I had to take a thirty years' war topic in order to cover the ten minutes.

Some seven years ago, when I got the idea into my head that I would be the proper predecessor of my amiable friend, General Taylor, I had gone around the state of Indiana pretty generally, and wherever two or three Republicans were gathered together in the name of the party, there I was also; I got a notice from a soldiers' reunion that was to be held at Elnora, that ran about like this: "Dear Sir and Comrade: You are invited to attend the soldiers' reunion at Elnora and address them on the 8th, 9th and 10th of July." I responded very promptly that that was an invitation after my own heart; that I always had felt that if I could have an opportunity to speak to my fellow-citizens for three full days, I might

say something that was worth listening to, but I had been always theretofore hampered as to time. Just as soon as the mail could come back from Elnora I got this: "Dear sir: You are expected to attend the reunion at Elnora on the 10th of July [that was the last day], at two o'clock in the afternoon. Limit of time, one hour;" and my hope of making a speech that would enlighten my fellow-citizens fell to the ground right then and there.

Now, as I have said, I have punished my fellow-members of the bar for an hour and a half this afternoon, and I am told to discuss "The Federal Idea" to-night in the limit of time of ten minutes; and in order that, like Shakespeare, I may not repeat myself,—and this habit of repetition is something that is born of this later generation—and that I may limit myself within the ten-minute period,—or, as my friend to my left, Mr. Chambers, insisted, that I should be exactly on time,—I have reduced my remarks to writing, and am prepared to do what Mr. Chambers could not do, under the circumstances, with the glasses that lay in front of him,—I can read the writing.

It would seem idle to attempt, within the short space of ten minutes, to discuss, in the presence of the lawyers of Indiana, the profound questions that for three-quarters of a century were discussed in court, in congress, on the stump, in the newspapers, and in private circles, without arriving at a conclusion that was satisfactory to all.

South of a given line, subject to a small minority, the conclusion was one way; north of that line, subject to perhaps a larger minority, the conclusion was the other way.

In this contradictory attitude of conclusions, a change of venue was taken from court to camp; from ballot to bullet and bayonet; from the atmosphere of debate to the smoke of battle; the irrepressible conflict not only between freedom and slavery, but between the Kentucky and Virginia resolutions of '98, and the decrees of the Supreme Court of the United States; were transferred to the wager

of battle, and for four years of war the best brains, the best conscience, and the best blood of the country were engaged on either side in this great issue, and I am to discuss it in ten minutes.

THE FEDERAL IDEA.

On this occasion, in connection with these proceedings in honor of the great Chief Justice, this necessarily means the Federal Idea—personally, I prefer the expression, the National Idea—as John Marshall understood and stated it, I find no more satisfactory statement of his views than that contained in *Cohens* v. *Virginia.*

"The American states, as well as the American people, have believed a close and firm union to be essential to their liberty and to their happiness. They have been taught by experience that this union can not exist without a government for the whole; and they have been taught by the same experience that this government would be a mere shadow that must disappoint all their hopes, unless invested with large portions of that sovereignty which belongs to independent states. Under the influence of this opinion, and thus instructed by experience, the American people, in the conventions of their respective states, adopted the present constitution.

"If it could be doubted whether, from its nature, it were not supreme in all cases where it is empowered to act, that doubt would be removed by the declaration that 'this constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.'

"This is the authoritative language of the American people, and, if gentlemen please, of the American states. It marks, with lines too strong to be mistaken, the characteristic distinction between the government of the Union and those of the states. The general government, though limited as to its objects, is supreme with respect to

those objects. This principle is a part of the constitution; and if there be any who deny its necessity, none can deny its authority. * * * " Pp. 380–381.

"A constitution is framed for ages to come, and is designed to approach immortality as nearly as human institutions can approach it. Its course can not always be tranquil. It is exposed to storms and tempests, and its framers must be unwise statesmen, indeed, if they had not provided it, so far as its nature will permit, with the means of self-preservation from the perils it may be destined to encounter. No government ought to be so defective in its organization as not to contain within itself the means of securing the execution of its own laws against other dangers than those which occur every day. * * * " P. 387.

"That the United States form, for many and for most important purposes, a single nation has not yet been denied. In war, we are one people. In making peace, we are one people. In all commercial regulations, we are one and the same people. In many other respects, the American people are one; and the government which is alone capable of controlling and managing their interests, in all these respects, is the government of the Union. It is their government, and in that character they have no other. America has chosen to be, in many respects and to many purposes, a nation; and for all these purposes her government is complete; to all these objects it is competent. The people have declared that in the exercise of all powers given for these objects, it is supreme. It can, then, in effecting these objects, legitimately control all individuals or governments within the American territory. The constitution and laws of a state, so far as they are repugnant to the constitution and laws of the United States, are absolutely void. These states are constituent parts of the United States. They are members of one great empire, for some purposes sovereign, for some purposes subordinate." Pp. 413, 414.

Cohens v. *Virginia,* 6 Wheaton 264.

Marshall, at this time, was in the splendor and plenitude of his powers as a judge; he had been on the bench for twenty years; the court had theretofore decided the great cases of

Marbury v. *Madison.*
Fletcher v. *Peck.*
McCulloch v. *Maryland.*
The Dartmouth College Case.

The roll is too long to call.

In his youth, he had been trained in war as well as in peace, in love of his country, his whole country; as the historian of Washington, his mind had been steeped and saturated with the entire history of his country; its vicissitudes and tribulations, its necessities and dangers; as a member of the state legislature and of congress, he had familiarized himself with the correlative rights and powers of the state and nation; as a member of the cabinet, his attention had been called to the relation between the legislative and executive departments of the government; as envoy to France, he had studied the relations of this country with "abroad," and had learned to draw the distinction between liberty and license; and as a lawyer, had learned to apply his knowledge to every conceivable complication and requirement. Out of the fullness of his heart his pen wrote, and the result was an authoritative exposition of the relations of the general government to the states that succeeding generations have not been able to improve upon; and in the fierce furnace of war, the "fiery gospel writ in burnished words of steel" burned it in the hearts of the American people, until to-night who is there to deny that we are a nation, with all the powers, duties, and obligations that national existence imply and compel?

"Many loved truth, and lavished life's best oil
Amid the dust of books to find her;
Content at last, for guerdon of their toil,
With the cast mantle she had left behind her,
Many in sad faith sought for her,
Many with crossed hands sighed for her;

But these, our brothers, fought for her,
At life's dread peril wrought for her,
So loved her that they died for her. * * *
Tasting the raptured fleetness of her divine completeness,
And what they dared to dream of dared to do."

The great men, who, in the convention of 1787–88 framed the constitution of the United States, builded wiser than they knew, and drew an instrument that they fondly hoped and believed would endure for ages; as Gladstone, the old man eloquent, said: "It is the most perfect work ever struck off at a given time by the brains and purpose of man."

With some few additions growing out of the war of the rebellion and the changed condition of the country resulting therefrom, setting down in black and white that which before had been stamped in red and black on the field of battle, the constitution of the United States is to-day the constitution as it was left in the opinions pronounced by John Marshall. The scarlet thread that ran through the warp and woof of the fabric that he created was the idea that the people of the United States, and not the states individually or collectively, had created a nation—not continued a confederacy: a nation that could stand erect and rely alone upon the powers that had been conferred upon it and was not dependent upon the consent, either express or implied, of the states, or any of them.

After the great men who formulated the constitution, what that constitution is, and that it is as it is, is due more than to any others to the achievements of five men: Grant, who, in the great contest for freedom, constitution, and national existence, marched its armies to victory; who at Donelson gave to the Union its first taste of success; at Vicksburg opened the Mississippi and let the great father of waters "flow unvexed to the sea;" and at Appomatox ended the rebellion; who plucked glory from the stars and twined it in the folds of the American flag.

Lincoln, who led the nation through the Red Sea of war, planted its feet upon the everlasting rock of freedom; struck the shackles

from the bondmen, wiped out the stain of slavery, made a living reality of that which had been theretofore theoretical and potential only, the Declaration of Independence; purified and re-established a nation.

Daniel Webster, who, in court, in forum, and upon the hustings, argued, adorned, clarified, and illustrated it with a wealth of diction and a glow of imagery that has never been equalled.

Washington, "first in war, first in peace, and first in the hearts of his countrymen," who participated in its creation and by force of his great character and the profound admiration entertained for him by the American people, procured its ratification.

And last, but by no means least, Marshall, who construed its language and terms, made of the dead letters imbedded in it a living force and a vital system upon which the people have come to rest as in a harbor of refuge after much tossing on the restless ocean of doubt, debate, and question. They rest from their labors, and their works do follow them, and the nation of to-day stands as a living monument of these labors. If you seek their monument, look around you. [Applause.]

TOAST—"THERE IS THE LAW, STORY; YOU FILL IN THE AUTHORITIES."

THE TOASTMASTER: Law is said to be the perfection of human reason. In this great science, as in all others, fundamental truths have largely been discovered, illustrated, and illuminated by the reasoning of great minds. While giving due regard to precedent, they have re-examined every disputed principle and brought it to the test of the deepest and most enlightened reason. The toast, "There is the law, Story; you fill in the authorities," shows the confidence of a great jurist in his conclusions, knowing that the *authorities* agree with him. *Decisions* may not, but the *authorities* do.

Hon. Charles L. Jewett was expected to respond to this toast, but in his absence I will call upon Judge U. Z. Wiley to respond to it.

RESPONSE.

JUDGE WILEY: Mr. Toastmaster and gentlemen of the State Bar Association: It is always embarrassing and generally unfair to be called on as a substitute. It is not only embarrassing and unfair to the substitute, but it is generally disappointing to the other fellow. I think I may illustrate this thought by an instance that comes within my personal experience. I began my professional career in the court presided over by our distinguished president and toastmaster. Under him I practiced law for some years. But the people believed that there was a greater field of labor for him, and he was called to preside as one of the justices of the supreme court. After his term of office had expired, he returned to the people that knew him and loved him so well, and they again called him to preside in the circuit in which I lived. A short time after that he came to the logical conclusion that the princely salary he was drawing as a judge of the circuit court could not be judiciously expended by as staid a judge as he was, and so he left the bench to go into the active practice. For some reason unknown to me, and which I have never yet discovered, they called me to the bench to take his place, and from that day to this that people have never quit wondering why it was done. So in that instance I was embarrassed by attempting to fill the position my predecessor had so ably filled, and I am quite sure my constituents were disappointed.

I am not so apt as the distinguished gentleman who has just preceded me. At ten o'clock this morning the secretary of this association was notified by wire that General Black could not be present. At once counsel was sought between the members of the executive committee, and they agreed at once that the only man to speak who could take General Black's place and deliver an oration before this association this afternoon was General Ketcham. I do not wield as sprightly or facile a pen as he does. I do not think as rapidly as he does. I was told at three o'clock this afternoon that I *might* be

called upon to respond to this toast. Now, General Ketcham had from ten o'clock this forenoon until three o'clock this afternoon to dictate to his stenographer a splendid and learned oration, that occupied in its delivery an hour and thirty minutes. Unfortunately for the judges of the appellate court, they are not all supplied with a stenographer, and consequently I haven't found time, or even a stenographer, to dictate the remarks that I might possibly be called upon to make to-night. [Laughter.] But General Ketcham keeps himself filled to overflowing with ripe thought and pungent opinions, and so that address to which we all listened with great pleasure was the spontaneous outpour of what he always keeps in store. It is a good thing that I did not, because I hadn't any idea in the world what I might possibly say, and you are thus relieved from the infliction of a carefully prepared and typewritten after-dinner speech.

I am asked to respond to a toast that seems to me at first blush to be full of sentiment and suggestive of thought. But in attending the meeting this afternoon, in listening to the elaborate and able address on the life and career of John Marshall by my distinguished friend, I must say that I have been so overwhelmed in the presentation and study of that address that I have not had time to get together the few thoughts that I might have gathered under certain other circumstances. I heard of a distinguished judge once, in a court of last resort, who, when the cases were distributed to him, took up the briefs, and the brief for the appellant contained several propositions of law. Between each proposition of law there was a blank space of half a dozen lines or more. In all the brief there was not a single, solitary authority cited. After the decision of the case by the learned judge, he chanced to meet the author of the brief one day, who happened to be a personal friend of his, and he said to him: "My dear sir, in that very important question which I decided a few days ago, why was it that you didn't cite a single, solitary authority?" "Oh, I will tell you, Judge, about that," he answered; "I

supposed that the court knew the law, and have always made it a practice never to cite an authority in a court of last resort, unless the judge invites that thing himself." [Laughter.] And so, I suppose, that is the sum and substance of the toast to which I am to respond to-night. I understand that the successful, entertaining after-dinner talker is a man who can say something to please his auditors without discussing the subject assigned to him. I trust you will not take the address that I have just been delivering as an example of this. [Laughter.]

My embarrassment is emphasized by the fact that I am called on to take the place of Colonel Jewett, who is a past-master on such occasions as this, and who is one of the most eloquent and gifted members of the bar in this state, where great lawyers abound. Your disappointment will be measured by the same gauge.

Now, gentlemen of the association, the subject of this toast is fraught with beautiful sentiment. It is suggestive of great thought. There is history connected with this sentiment, or possibly a legend; and that is simply this: That it is supposed of the great and illustrious chief-justice, whose life and career we this day celebrate, that in regard to a certain case pending in the Supreme Court of the United States, after consultation with his associates, and after they had arrived at a conclusion, he said to one of them who was to write the opinion,—Justice Story,—"There is the law, Story; you fill in the authorities." It seems to me, members of the association, that that sentiment of the matchless judge at that time was, indeed, almost a maxim. It was in the early history of the jurisprudence of this great country. There were, indeed, few ruling precedents, as we call them to-day, meaning decided cases. Under the constitution which was being interpreted, which was being construed by those great minds, it was possible—I say not anything too much—to arrive at a conclusion, and when the conclusion was reached, that conclusion was the law of the case. Authorities were scarce; precedents were few. And so after a consultation between

those great minds, because they were all great jurists, it was proper for the chief-justice to say to his associate, "There is the law, Story; you fill in the authorities." Judges were not then hampered as they are now, by the authorities. Upon many questions that have come before the courts since those halcyon days of our early jurisprudence, confusion reigns among the authorities, and judges stand confounded before the conflicting law as thus declared. The difficulty now with judges in writing their opinions is not so much in determining the law, but in reconciling the law with the authorities. In those days authorities were few and the law was supreme. Guided by the constitution, that great bulwark of American liberty, the judges found little trouble in declaring the law. I take it, Mr. President and gentlemen of the association, if that immortal jurist were here to-night, or if he graced the bench to-day as he did nearly a hundred years ago, he might say to his associates, after a consultation about the intricacies of a particular case, he might say, and properly say, "Here, Story, are the authorities; fill in the law." It occurs to me, and I am not an old man, Mr. President, that in those days it was somewhat easier to reach a conclusion, even under the broad branches of the constitution, than it is to-day to reach a conclusion under the intricate practice acts and legislative acts of the commonwealth of Indiana, and the conflicting authorities that abound. If there is anything that confuses the judicial mind, it is, if you please, the ruling precedents of the day. I am told by the newspapers that even in our own supreme judicial tribunal there are different views as to controlling precedents, even in constitutional questions. But, gentlemen of the association, there is one law above every law, notwithstanding judicial precedents, and that law is to arrive at the right, the justice, the equity of the individual case. Gentlemen of the profession, fill in the law, and cease trying to reconcile conflicting authorities. [Applause.]

TOAST—"FROM GREAT BRIDGE TO VALLEY FORGE WITH THE SHIRT MEN."

THE TOASTMASTER: The subject, "From Great Bridge to Valley Forge with the Shirt Men," is suggestive of the beginning of the splendid career of John Marshall. The subject will be presented by Lieutenant-Governor Newton W. Gilbert, in the absence of Mr. O'Hara, who was expected to respond to this toast.

RESPONSE.

MR. GILBERT: Mr. Chairman and gentlemen of the association: It is said that a number of years ago, when the tariff question had not been agitated or discussed for some time, General John A. Logan, who was then a member of the United States senate, thought there were indications that that question was soon to become prominent, and, desiring to gain some information on the subject, and looking to that end, he sent a messenger over to the Congressional Library with this note: "My dear Spofford: If you have any works which treat of the tariff question, or protection and free trade, will you kindly send them to my residence. In a day or two, after I have read them, I will return them. Yours truly, John A. Logan." The next morning, while the senator was breakfasting, two drays backed up in front of the house, loaded with books, and the driver of one of them coming in presented this note: "My dear Senator: I send two wagon loads of books this morning; will send two more this afternoon, and if the clerks are not too busy will send the balance to-morrow. Yours truly, Spofford."

About the middle of the afternoon, when an officer of this association told me that if I attended this banquet it would be necessary for me to respond to this toast, I told him I didn't know anything about the subject I was expected to talk about. I don't know anything about "Red Shirt Men." (I see the program don't say "red.") But it occurred to me that possibly I could save myself

by going to the state library and there I could find out something about the military career of John Marshall, of which, I confess, I knew absolutely nothing. But on examination of our state library, which in many respects is replete with works relating to John Marshall, which tell about him in every other walk of life, almost, I found there was practically nothing contained in the library of this great state of Indiana treating of the military career and achievements of John Marshall. Therefore, having no other source of information, I will not have very much to say upon the subject.

At the time that the revolutionary war broke out John Marshall was a boy living in a remote part of Virginia, at a place where the news of the first conflicts came very slowly; but at the first rumors of the battle of Lexington, he, then a lad of nineteen, but the lieutenant of a military company which was organized from three counties of old Virginia, went to the nearest point whence he could rendezvous his men, and there he gathered them together and for several days drilled them in the use of their weapons. I did find that they were clad in *green,* not red, hunting shirts, but that John Marshall wore a light blue or purple shirt and trousers of the same color, and it was his custom while in the army, so far as he could, to supply himself with those of the same color. After drilling his men there, he and his father were both made officers of the regiment which went out from that locality, his father being a major and he a lieutenant. His first battle was the battle of Great Bridge, a place in Virginia not far from his home. Later he participated in the battles at Monmouth, at Trenton, at Brandywine, at Germantown, and other places which have escaped my memory; but at each battle where he and his company were engaged they distinguished themselves by signal bravery, and he himself was distinguished among all officers of his age and rank by his rare good sense. He was an extremely popular officer, so that in almost every case in which disputes arose between the officers, or in which it was necessary to have a judge-advocate appointed, the man to serve in that

most delicate of all positions, in which he must be not only the prosecutor but the protector of the accused, was John Marshall, even though he then was but a boy. He was in the army from the battle of Great Bridge, in 1775, until about 1781. He spent nearly six years of his life in the arduous service of his country, enduring the hardships and suffering the privations of that great conflict. He was one of that great body of men unparalleled in the world's history, who, unpaid, unclothed, and unfed, tracked the snows of Valley Forge with the blood of their footsteps during that rigorous winter of 1778, and never turned his eyes to his country with complaint, or from his enemies with fear. [Applause.]

The world has always loved a soldier,—the soldier who has endured, the soldier who has suffered, the soldier who has pledged his life and all that life holds dear to the service of his country; and we may well believe, little as I know of the military career of John Marshall, that had it not been for him and men like him, many of those brave and true men for whom that enduring testimonial of Indiana's love has been erected, almost within the sound of my voice --the greatest soldiers' monument the world has ever seen—many of those men would not have rendered to their country the service which this shaft commemorates. We may well believe, had it not been for John Marshall and men like him in that supreme struggle for national existence, history would not record the deeds nor grace its pages with the names of Dewey and Sampson, of Roosevelt and Hobson, of Wheeler and Lawton. We may well believe that had it not been for John Marshall and men like him, many a fever-stricken lad, to-night lying upon a bed of pain upon yonder isle of the sea, thousands of miles from home and native land, would not be able to lift his fever-dimmed eyes to his flag with a prayer to God that it might never meet defeat nor be furled in dishonor. I thank you. [Applause.]

TOAST—"FROM THE FIRING LINE TO THE FORUM."

THE TOASTMASTER: The next toast will be "From the Firing Line to the Forum." This is also suggestive, and many a lawyer who has gone from the firing line to the bench recognizes that he has only retired from one firing line to another, where the moral courage required on the second is found as much in demand as on the first.

Mr. D. W. Simms, in the absence of John S. Bays, will respond to this toast.

RESPONSE.

MR. SIMMS: Mr. Toastmaster and gentlemen: I feel very much like the lawyer who is employed, on the eve of trial, in a case that he had never heard of till the employment. His situation, however, is better than mine, because, in that event, he generally has a retaining fee in his pocket, which I have not. This afternoon I came to the city with the hope and expectation of enjoying this banquet after listening to the address which Mr. Ketcham promised to give in the absence of General Black, and, while wandering around the halls of Plymouth Church I secured with but little effort what seemed to be a more or less cordial invitation to make an impromptu speech at this banquet to-night. I do not hold any enmity to the distinguished president and secretary of this bar association on this account,—they are men of the kindest and gentlest of natures,—but I am sure that some evil-designing person, some enemy of whom I have never dreamed, must have led them into this grievous and egregious error. Some years ago, while living in one of the small towns of Indiana, far down upon the Wabash river, I found myself in a similar predicament, perhaps worse even than this. I was nominated for the high position of city councilman. [Laughter.] It was agreed by everybody that I would be the only man defeated upon the ticket. It turned out, after the election was over, to my horror, that I was the only man who was elected. An investigation

developed that I had a far greater number of enemies in the town than I ever dreamed of, and they took this method of getting revenge. When I found that I had been chosen to respond to the toast that had been given to the gifted and eloquent John S. Bays, I felt like taking the first train for home. But, pulling myself together, I bought a cartload of books this afternoon from the Bowen-Merrill Company (on time of course). I found by penning myself up in a room, that I had gleaned from the meagre history of John Marshall's military career the simple facts which have been recited in such a tearful manner by Senator Gilbert a moment ago. [Laughter.] And it is more in anger than in sorrow that I rise to make my excuses to you for my absolute inability to respond to the toast that has been so kindly given to me this evening. I do want to say, however, that the subject is a meagre one, and it has been entirely covered by Mr. Gilbert. But, aside from that, since you have been so kind as to invite me to respond to this toast this evening, I want to express my sincere appreciation of the things that have been said that are of value to me concerning the life and history of John Marshall. If one had time to devote to the study of it, it seems to me that something good might be gotten out of the toast, "From the Firing Line to the Forum."

John Marshall, at the time he went into the firing line, was a young man, as Senator Gilbert has told you. He had been reared surrounded and prompted by the spirit which actuated the patriots of those days. He was imbued with the idea of personal liberty and of national independence before he reached his majority. He had associated with such men as Patrick Henry in his early days, and he became acquainted in his later years with General Washington and Mr. Hamilton, and men of that class. He was a man of a positive nature, and as one great statesman has said, the young man who is not an enthusiast has principles that are low and grovelling, while the old man who is an enthusiast has lived in vain. John Marshall was an enthusiast in every sense of that term. His

was a positive nature. Surrounded as he was by the influences that were thrown about him since his early childhood, it is not surprising when the news came from Lexington and Bunker Hill that he would lay aside the pages of Blackstone and take up the study of military tactics and maneuvres. He entered the Continental army as a lieutenant, going to Norfolk to fight Lord Dunsmore; going again the next year as lieutenant of a regularly organized regiment, the Eleventh, I believe, receiving his appointment but a few days after that immortal instrument, the Declaration of Independence, had been given to the world; in the following year he was appointed a captain. Then followed in succession the battles which were detailed to you, and which I expected to recite to you in thrilling terms and bring down the house, as did Senator Gilbert a while ago. [Laughter.] In 1779, it was found that in the Virginia line of officers there were too many, and he was sent home. It was while waiting for the cue that he was needed again for the service of his country that he entered William and Mary College. He could not have practiced law from then to 1785, because during that time the courts of his state had been suspended. After attending these lectures he returned home and received his license to practice law, which he continued to do until after Arnold's invasion. As soon as the war closed he entered upon the practice of his profession, and it was only broken by the public service he rendered his country in the legislature of his state, in congress, in the cabinet, I believe, and as minister to France.

John Marshall has lived a life that has been of incalculable value to us. It comes in the nature of an inspiration that a man with such transcendent virtues as a lawyer, such rare ability as a jurist, combines with them that rugged manhood and sterling character that has made us the greatest nation beneath the stars. And that is what John Marshall and his compatriots did. [Applause.]

TOAST "A PARADOX—A SIMPLE MAN AND A JUDGE OF GENIUS."

THE TOASTMASTER: The complex nature, the many and transcendent virtues, and manifold and widely divergent constituent elements of the character, ability and attainments of him whose life and memory we to-day commemorate, have given rise to the toast, "A Paradox—A Simple Man, and a Judge of Genius."

While we regret that Honorable John W. Kern, who was to respond to this toast, is absent, it will be responded to by Mr. Daniel E. Storms.

RESPONSE.

MR. STORMS: Mr. Toastmaster and gentlemen of the Indiana State Bar Association: I can tell a tale of woe longer than any man who has preceded me. When I stepped into this beautiful club house at 7:30 o'clock to-night, the secretary of this association came to me and said, "Dan, we can't find anybody else; Mr. Kern is absent, and you will have to help us." I said, "If you can't find anybody else, of course I will do the best I can." I did not even know what toast had been assigned to Mr. Kern. I felt a little bit as I did one time during the campaign. I received a telegram from the State Central Committee to go to a certain city and fill the place of a very distinguished gentleman who was to speak there that night, a man who is recognized all over this State as a great orator. I telegraphed back that I could not go. They called me up over the long-distance telephone, and told me I must go; that the gentleman was in the southern part of the state in a wreck, and that the people had arranged to give him a magnificent reception. I said, "Why, I don't want to go there; the people don't want to hear me. They want to hear the man advertised, and will be disappointed." They insisted, however, and I said, "If I can get Colonel DeHart to accompany me, I will consent to go." I went to see the Colonel, and he consented to go. On the way

over, the Colonel suggested that we get off the train on the side from the platform, and without making our presence known, go quietly to the hotel. He said, "After supper, we can make our way to the back door of the opera house, and after the people have gathered they will be ashamed to leave." Well, they had a magnificent torchlight procession, and the opera house was filled to overflowing with people anxious to hear the orator of the evening. The local band, in all its glory, was placed just in front of and to the right of the stage. Of course, we were seated on the stage. The chairman of the evening was a little nervous and somewhat disappointed. He gave us the following introduction: "Ladies and gentlemen: I am very sorry, indeed, to have to announce to you that the speaker of the evening can not be with us. It is a great disappointment to us all. But we have a couple of gentlemen from Lafayette who will try to fill his place, and if you will be patient and wait until they get through, we will have some excellent music by the local band." [Laughter and applause.] Now, gentlemen, this is no joke; this is the truth. [Applause.] If you will wait until I get through, you will have an excellent address by one of the most distinguished gentlemen of the Indiana State Bar Association, who, I am glad to say, is present with us.

I can not stop talking without congratulating the management upon bringing together the attorneys of this state in this beautiful club room. I think that every one of us here should thank them for the magnificent and splendid entertainment they have given us. I want to thank them, and I want you all to join with me. I am a little bit like the fellow who sent a telegram congratulating his brother who got married in Illinois. There was a family by the name of Dam. There were nine boys and three girls, and the eldest boy went to Illinois, and fell in love with a girl and married her. It was so far out to Illinois that the family thought they couldn't make the journey to attend the wedding, couldn't afford it; but they thought that some respect should be shown John, and

they decided to send him a telegram congratulating him; so during the day they sent the next oldest boy to the telegraph station to send the telegram. Well, Mr. William Dam went down to the telegraph office, and called for blanks. He had never used one before, and he started in by spoiling the first blank, then the second, and the third. He couldn't word it to suit him. Then he got mad and struck off the following telegram: "The whole Dam family sends congratulations." [Laughter.] I think we all ought to join in congratulations on the magnificent entertainment that you have given us this evening.

Now, I can say that I am not prepared, and I say it honestly. You will know that, Mr. President, before I get through. [Laughter.] I am like the tramp who stole a watch—and this shows how a simple man, and a judge of genius, is sometimes fooled, Mr. President. He was brought up before the judge, and the indictment was read, and the judge said, "Are you guilty or not guilty?" "I am not guilty, your Honor." "Have you counsel?" "No." Well, there was a young lawyer, a simple looking fellow, perhaps, because he hadn't had any practice, and this judge of genius appointed him to defend the tramp. This young lawyer put all the strength that he had, all the fire and vigor of his young manhood into the defense of that tramp; and he went into it so earnestly that the tramp finally became enthused, and took the witness stand and swore that he had never seen that watch, knew nothing about it, and had not been in the vicinity where the watch was. When the case was closed, the prosecuting attorney made his address to the jury. Then this young man, this simple attorney, arose, and the way he did discuss the innocence of that tramp! He soon had the jury crying, and he had the judge crying, and it took the jury about five minutes to whitewash that tramp, provide him with wings and a halo, and bring in a verdict of "Not guilty." The tramp was more surprised than the judge or the young lawyer. He arose, and with tears in his eyes, turned to the young lawyer

and said: "Mr. Lawyer, I don't know you, and I never saw you before. You have done me a great service. I—I—want to thank you. I haven't got any money to pay you for your service, but here is that blamed watch; take it for your fee." [Laughter.]

I want to say that I am well pleased with this, my first attendance of a meeting of the State Bar Association. Mr. Toastmaster, I will go home well repaid. I listened this afternoon to an address that made an impression on my mind. I have listened this evening to another that has made, if anything, a deeper impression with reference to the merits of this great jurist. From what little I know of his history, and I haven't had time to open a book since I was notified that I would be expected to speak this evening,—but from what little I know of him, he was a simple, kindly man, a man simple in the ordinary walks of life, but when it came to deciding and discussing these great questions from the bench, he rose to the occasion as no other man had theretofore or has since. It seems to me that every one of us can well afford to study his life, and to try in our weak way to emulate some of his virtues. I don't know of any life, as an attorney, as a judge, that was filled or rounded out better than his. It has been said that—

"The period of life is brief;
'Tis the red in a red rose leaf;
'Tis the gold in a sunset sky;
'Tis the flight of a bird on high.
But one may fill the space with such infinite grace,
That the red shall tinge all time,
The gold through the ages shine,
And the bird fly swift and straight
To the portals of God's own gate."

Ah, gentlemen! the gold in his life shall through the ages shine to light us on and make us better citizens, and cause us to have a better appreciation of this best country that God has ever given to man. [Applause.]

TOAST—"THE LAW'S PERIHELION—THE WORLD'S GREATEST JUDICIAL SYSTEM HEADED BY TIME'S GREATEST JUDGE.

THE TOASTMASTER: The last, though not the least, of the subjects of the evening is, "The Law's Perihelion—The World's Greatest Judicial System Headed by Time's Greatest Judge," and will be discussed by a gentleman of broad culture, a great lawyer and a most interesting and entertaining speaker. Judge Robert S. Taylor will respond to this toast.

RESPONSE.

MR. TAYLOR: Mr. Toastmaster, and my brethren of the State Bar Association: It appears to be in order to-night for each of the speakers to explain the disadvantages under which he has undertaken to perform the task laid upon him. In like manner I may say that it is less than three months since I was advised what I was to do here to-night. [Laughter and applause.]

It is known that gentlemen of the clerical profession, when away from home in attendance upon ecclesiastical convocations of one sort and another, not infrequently unbend themselves to innocent pranks. One of these exuberances is to preach from a text "unsight, unseen," as the boys say when they trade jack-knives.

The preacher of whom I speak undertook this task. As he rose to begin his sermon, his partner in the game laid a slip of paper on the pulpit. He read from it, "I have chosen for my text a part of the thirtieth verse of the twenty-second chapter of the Book of Numbers;" and then, turning over the paper, he read: "Am I not thine ass?" He reflected a moment, and read again: "Am I not thine ass?" And then he proceeded: "My beloved brethren, this remark was made, as appears from the context, by an inspired ass of the female gender, the only animal of the kind mentioned in scripture. Inspired asses of the male gender are not uncommon even in our day. You will notice that this question appears at

first blush to raise a question of property. It says, 'Am I not *thine* ass?' as though the questioner did not know whose ass she was. But we learn from the context that her rider had been beating her with a stick, and I construe her question to be intended as a reminder to Balaam that she was his, and was not to be treated like a mere livery stable ass. Again, the text appears at first sight to raise a question of biology. When she asks 'Am I not thine *ass?*' it might be taken to mean that she didn't even know what she was. But I take it that the text has a deeper meaning than that. It is to be remembered that in those days an ass was one of the most useful things that a man could possess. This remark was intended, therefore, to remind Balaam that she was valuable property, and that in beating her he was doing injury to himself. Again, my brethren, the text raises a question of personal identity. It says, 'Am *I* not thine ass?' This is a thought for each one of us to take home to himself; 'Am I not thine ass.'"

Then, bending over the pulpit, he said to the man sitting below: "Brother Jones, I rather think I am."

Then, turning again to his congregation, he said: "My brethren, this fool text was none of my selection. Like an ass, I agreed with Brother Jones to let him choose my text this morning, and he has set it up on me in the manner you have seen. I shall pass it by and preach a sermon from another and better text. You will find it in the first verse of the fourth chapter of the first book of Samuel: 'And the Philistines came up and pitched in.' There's a text that has some meaning in it, some life, some action. Pitch in's the word. When there's work to be done, the devil driven out of town, the preacher's salary raised, pitch in. Don't go moping round asking where you're at and whose ass you are."

The sentiment which you have assigned to me, sir, is a noble sentiment. At the same time it imposes on me an embarrassing duty. It is suggestive of panegyric. I am conscious that I am expected to eulogize. But the toast is in itself such an unap-

proachable expression of eulogium that it leaves me no room to say anything in that line that will not be small, stale and unprofitable by comparison. I shall not attempt, therefore, to hitch my wagon to a star, but will prudently consider the subject from the ground.

In order to speak with precision, I have taken a short course of astronomical study since I was notified of my part in this evening's proceedings. I find that a perihelion is that part of the orbit of a heavenly body where it takes a home run around its field center. The highest recorded speed in such a celestial sprint which I have found in the books was 21,960 miles a minute. That's too fast for me. I think it would have been pretty fast for John Marshall. He would have needed a pair-o'-heels-on like the winged heels of Mercury in order to make it.

I like best to think of the great chief-justice as plain John Marshall. To my mind he was the great common-sense judge. A man need not be a lawyer to understand his reasonings. He transmuted everything which passed through his brain into current gold of thought. Every man could see what it was and understand what it meant. He was never dazed by the vastness of the case. It fell upon him to take a leading part in the decisions of questions the like of which were never before submitted to any court. But he met them with the calm self-possession of one to whom reason, and reason's offspring, the law, are sufficient unto all things. Happy it was for his country that she found in him a master mason able to get up plumb and in line the pillars of her temple of liberty on the foundations of the constitution.

These are times to make us think often of John Marshall, wondering what he would think of the questions that confront us now. He never dealt with any that were more important or more difficult. They not only allow, but demand from every citizen his best thought and freest expression of it, regardless of race, color, or previous condition of servitude. And they command from us the most generous reception and impartial consideration of one another's thoughts.

It is not for any one of us to be too sure that he is right. It is for every one of us to put away from himself as far as possible those seductive influences of party association or other predisposition which so often color our thoughts more than we are aware. Here, if ever, we ought to think only as citizens and patriots.

What would John Marshall say of the constitutional questions which have grown out of our war against Spain? Only a second John Marshall could tell. What can we say about them that is appropriate to John Marshall day? This is not a time to discuss political questions. But a naked constitutional question ought not to be a party question in an assembly of lawyers. It may become one later, but it ought not to until by non-partisan discussions we have found our own views upon it.

We have the express opinions of Chief Justice Marshall on questions which are so nearly analogous to these which are before us to-day that to some minds they are decisive; and at the same time so non-analogous that to other minds they are indecisive. But there are some broad principles running through all his decisions which have, to my mind at least, a deep significance. One of these is the fact that in the adoption of the constitution of the United States there was set up a government. There were those in his day who contended that the thing created by the constitution was only a central political agency. He was called on to consider that question only in respect to that thing, whatever it was, and the states, and territories preparing for statehood, and the people of both. But whenever and however the question was presented to him, he never failed to keep in view the fact that the United States are a government.

When the constitution came to Marshall's hands it was but a skeleton. But he found in it the bones of a government, and he clothed them with muscles. He never failed to find in that government all the powers necessary to enable it to assert and maintain its authority, and do all things necessary to be done by it.

We have now to face a question never presented to him. We have acquired by conquest, coupled with purchase, a country of wide area and a population equal, probably, to one-tenth of our home population—a people alien to us in race, manners, habits and institutions. What shall we do with them? What can we do with them?

It is agreed on all hands that we had power to take the land and assume a relation of sovereignty over its inhabitants. With what intent and what effect have we done both? Was it to make states of it, or to hold it as a possession in undetermined final relation to the government? Had the government power to have an intent on that subject? If it had, does its intent affect its act?

I should account myself an unworthy disciple of Marshall to believe that the government which he built, in a constitutional sense, was a thing incapable of acting upon intention. It was a government endowed with intelligence and animated by purpose. It was not a political automaton, but a living personality. Its acts are to be referred to its intentions, and construed in the light of its purposes.

If our government *can* have an intention, it exercised that faculty in the acquisition of Porto Rico and the Philippine Islands. It took them not only without intent to make states of them, but *with* intent *not* to do so, so far as present purposes go. Was that intent effectual? Is that territory what we intended it *should* be—a mere territorial possession to be hereafter disposed of as we shall think best, or is it what we intended it *should not* be—an enrolled pupil in the training school of states and entitled to all the rights and privileges of that relation?

I am persuaded that John Marshall would have tolerated no such conception of government as that—a thing without power to execute its will—a paralytic extending his arm to take food in his mouth and thrusting his fork in his eye. No; the will of our government is as prevailing as its arm. The intent with which

we took those islands was as effective as the power with which we took them. It was the power of a sovereign nation and the intent of a sovereign nation. The islands are with us and under us, but not of us.

Do you say, "Horrible; the government of the United States wielding power as autocratic and despotic and irresponsible as that of the Czar of Russia"? By no means. The constitution follows the flag to every port and to every land. But again, with what intent and to what purpose does it follow? Is the constitution a mere phonograph, grinding out words, or has it, too, its intelligent and beneficent purposes? It goes where it goes to help, not to harm; to bless, not to curse. It is the living charter of a living government. When questions arise as to its application in far-off lands, they are to be solved precisely as we solve like questions in Indiana. It is for the courts to construe the constitution, and say when and where and how its provisions are to be applied. The supreme court is the voice of the constitution, interpreting it for the islands of the sea which are under the flag, as well as for the states on the mainland. In doing this it is to be mindful of the fact that the same sovereign power which made Louisiana part of the body politic of the Union has made the Philippine Islands a possession which is *not a part of that body,* and it will apply the constitution according to its intent in view of that fact. But it is the same constitution expounded by the same court wherever the flag flies.

We are bound to believe that if John Marshall were with us today he would find some way to answer these hard questions which would be consistent with the dignity and greatness and beneficence of our government. I wonder—just wonder—whether it would be along some such line as this.

And now, gentlemen, I beg leave to report to you a discussion and decision of this question which may not be as authoritative as that of Judge Marshall, but which will not be entirely inappropri-

ate to the occasion. It was reported by one of the participators in the discussion, late in the evening, to his good wife, who inquired where he had been and what he had been doing. He said: "My dear,—fact is that—th' club was discussing—th' question whether constitushun followed th' flag." "Oh, you were, were you? Well, what did you decide?" "Tha's it—what did we d'cide? You shee, Jennie, Smith says th' constitushun don't follow anything, and John Banks he said thet th' constitushun's more'n hundred years old, and 'f it goes anywhere it's got to take a hack." "What did you say?" "Me?—me? Well, I just said this: I said the way t' solve th' problem is to wrap the constitushun tight 'round th' flag-staff, and let them go in together." [Laughter and applause.]

THE TOASTMASTER: Gentlemen, the exercises of the evening are closed.

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Hord, Kendall M.....Shelbyville.
Hottel, Walter E.....Bloomington.
Hough, William R.....Greenfield.
Howard, Timothy E.....South Bend.
Hugg, Martin M., Brandon Block.....Indianapolis.
Ibach, Joseph G.....Hammond.
Iglehart, John E.....Evansville.
Jackson, Francis M.....South Bend.
Jackson, Richard A.....Richmond.
Jackson, Uriah Stokes.....Greenfield.
James, Fleura F.....Newport.
Jameson, Ovid B., Brandon Block.....Indianapolis.
Jewett, Charles L.....New Albany.
Johnston, William R.....Lawrenceburg.
Jordan, James H.....Martinsville.
Joss, Frederick A., Brandon Block.....Indianapolis.
Kane, Ralph Kent.....Noblesville.
Kappes, William P., Stevenson Building.....Indianapolis.
Keegan, Hugh G.....Fort Wayne.
Kelley, Frank A.....Terre Haute.
Kelly, Daniel E.....Valparaiso.
Kern, John W., Stevenson Building.....Indianapolis.
Ketcham, William A., Stevenson Building.....Indianapolis.
Kirkman, Roscoe E.....Richmond.
Kirkpatrick, Lex J.....Kokomo.
Koons, George H.....Muncie.
Kraus, Milton.....Peru.
LaFollette, Jesse J. M., Government Building.....Indianapolis.
Lamb, John E.....Terre Haute.
Lambert, Francis E.....South Bend.
Leonard, Elmer.....Fort Wayne.
Leonard, Wilmer.....Fort Wayne.
Lesh, Ulysses S.....Huntington.
Lewis, Henry C.....Greencastle.
Lockwood, Virgil H., Lemcke Building.....Indianapolis.
Logsdon, Hiram M.....Evansville.
Long, Jesse R.....Muncie.
Louden, John H.....Bloomington.
Louden, Theodore J.....Bloomington.
Lotz, Orlando J.....Muncie.
Lowry, Robert.....Fort Wayne.
Lutz, Clark J.....Decatur.

MacKibbin, Stuart.....South Bend.
Magee, Rufus.....Logansport.
Marsh, Albert O.....Winchester.
Marsh, Ephraim.....Greenfield.
Marshall, Buena V.....Terre Haute.
Martin, William H.....Bedford.
Martindale, Charles, Indiana Trust Building.....Indianapolis.
Martindale, Elijah B., Fitzgerald Building.....Indianapolis.
Mason, Augustus Lynch, Fitzgerald Building.....Indianapolis.
Mathias, Henry H.....Greencastle.
Matson, Frederick E., Stevenson Building.....Indianapolis.
Mattison, Hamilton A.....Evansville.
McAdams, Charles B.....Williamsport.
McBride, Robert W., Fitzgerald Building.....Indianapolis.
McCabe, Charles M.....Covington.
McCullough, James E., Yohn's Block.....Indianapolis.
McGriff, Emerson E.....Portland.
McMaster, John L., Superior Court.....Indianapolis.
McNutt, John C.....Martinsville.
Menzies, Gustavus V.....Mount Vernon.
Miller, Charles W.....Goshen.
Miller, John H.....Princeton.
Miller, Reuben N., Law Building.....Indianapolis.
Miller, William H. H., Union Trust Building.....Indianapolis.
Mitchell, James L., Indiana Trust Building.....Indianapolis.
Moffett, William W.....Bloomfield.
Monks, Leander J.....Winchester.
Montgomery, Oscar H.....Seymour.
Moores, Charles W., Lemcke Building.....Indianapolis.
Moores, Merrill, 19 State House.....Indianapolis.
Moran, Daniel J.....Hammond.
Morgan, Henry C.....Huntington.
Morris, John, Jr.....Fort Wayne.
Morris, Nathan, Commercial Club Building.....Indianapolis.
Morris, Samuel L.....Fort Wayne.
Morrison, Frank W., 129 East Market street.....Indianapolis.
Morrison, Harry C.....Shelbyville.
Morrison, James F.....Kokomo.
Morrison, James W.....Frankfort.
Mount, Walter W.....Tipton.
Myers, David A.....Greensburg.
Myers, Quincy A.....Logansport.
Nash, Leroy B.....Tipton.
Neal, John F.....Noblesville.
Nelson, John C.....Logansport.
New, Willard.....Vernon.

Newberger, Louis, Commercial Club Building.....Indianapolis.
Newby, Leonidas P.....Knightstown.
Noel, James W., Lemcke Building.....Indianapolis.
Nye, Mortimer.....Laporte.
O'Hara, John W.....Peru.
Overton, William C.....Kokomo.
Palmer, George C.....Monticello.
Palmer, Truman F.....Monticello.
Parker, Samuel.....Plymouth.
Paulus, Henry J.....Marion.
Paxton, Thomas R.....Princeton.
Penfield, Wm. L. (Department of State, Washington, D. C.).Auburn.
Perkins, Lafayette, Law Building.....Indianapolis.
Peterson, John B.....Crown Point.
Pettit, Henry C.....Wabash.
Pickens, Samuel O., Lemcke Building.....Indianapolis.
Pickens, William A., Commercial Club Building.....Indianapolis.
Piety, James E.....Terre Haute.
Piety, John O.....Terre Haute.
Pleasants, George S.....Vevay.
Posey, Frank B.....Evansville.
Powers, Frank M.....Angola.
Proctor, Robert H.....Tipton.
Purdum, William C.....Kokomo.
Rabb, Albert, Indiana Trust Building.....Indianapolis.
Ralston, Samuel M.....Lebanon.
Reardon, Edward D.....Anderson.
Reeves, Jesse S.....Richmond.
Reinhard, Francis J.....Rockport.
Reinhard, George L.....Bloomington.
Reiter, Virgil S.....Hammond.
Remy, Charles F.....Columbus.
Renner, Charles G.....Martinsville.
Richardson, Edward P.....Petersburg.
Richardson, Robert D.....Evansville.
Ritter, Eli F., Law Building.....Indianapolis.
Robinson, Woodfin D.....Princeton.
Roby, Frank S.....Auburn.
Rogers, William P.....Bloomington.
Rohbach, James A., Law Building.....Indianapolis.
Rose, James E.....Auburn.
Ross, George E.....Logansport.
Ross, Nathan O.....Logansport.
Royse, Lemuel W.....Warsaw.
Rupe, John L.....Richmond.
Sansberry, James W.....Anderson.

Shambaugh, William H.....Fort Wayne.
Sharpe, Arthur L.....Bluffton.
Shea, Joseph H.....Seymour.
Sheridan, Harry C.....Frankfort.
Shirley, Cassius C.....Kokomo.
Shirley, William S.....Martinsville.
Shively, Charles E.....Richmond.
Shively, Dudley M.....South Bend.
Shively, Harvey B.....Wabash.
Shutts, Frank B.....Aurora.
Simmons, Abram.....Bluffton.
Simms, Dan W.....Lafayette.
Smith, Alonzo G., Indiana Trust Building.....Indianapolis.
Smith, Charles W., 128 East Washington street.....Indianapolis.
Smith, Horace E., Lemcke Building.....Indianapolis.
Smith, John M.....Portland.
Smith, William C.....Delphi.
Spencer, Charles C.....Monticello.
Spencer, John W.....Evansville.
Spencer, Maurice L.....Huntington.
Stannard, Melchert Z.....Jeffersonville.
Stansbury, Ele.....Williamsport.
Stansifer, Simeon.....Columbus.
Stanton, Ambrose P., Ætna Building.....Indianapolis.
Starr, Harry C.....Richmond.
Stitt, Thomas L.....Wabash.
Storen, Mark.....Scottsburg.
Storms, Daniel E.....Lafayette.
Stotsenberg, Evan B.....New Albany.
Strong, Ephraim K.....Columbia City.
Stuart, William V.....Lafayette.
Sulzer, Marcus R.....Madison.
Swan, Elbert M.....Rockport.
Tandy, Carroll S.....Vevay.
Taylor, Arthur H.....Petersburg.
Taylor, David T.....Portland.
Taylor, Edwin.....Evansville.
Taylor, Harold, Indiana Trust Building.....Indianapolis.
Taylor, Robert S.....Fort Wayne.
Taylor, William L., Attorney-General.....Indianapolis.
Teter, Hiram, Stevenson Building.....Indianapolis.
Thompson, Charles N., Law Building.....Indianapolis.
Thompson, Claude.....Crawfordsville.
Thornton, William W., Stevenson Building.....Indianapolis.
Todd, Nelson K.....Bluffton.
Townley, Morris M., Ætna Building.....Indianapolis.

Traylor, William A.....Jasper.
Turner, Perry L.....Elkhart.
Tuthill, Henry B.....Michigan City.
Van Vorhis, Flavius J., Law Building.....Indianapolis.
Vaughn, Edwin C.....Bluffton.
Vesey, William J.....Fort Wayne.
Voight, George H.....Jeffersonville.
Walker, James T.....Evansville.
Walker, Lewis C., Lombard Block.....Indianapolis.
Watson, Ward H.....Jeffersonville.
Waugh, Dan.....Tipton.
Weathers, Charles A.....Cannelton.
Welborn, Oscar M.....Princeton.
Welman, John D.....New Albany.
Wiley, Frederick H., Union Trust Building.....Indianapolis.
Wiley, Ulric Z.....Fowler.
Williams, David P., Indiana Trust Building.....Indianapolis.
Williams, John G., Indiana Trust Building.....Indianapolis.
Williamson, Joel E.....Evansville.
Wilson, James B.....Bloomington.
Wilson, John R., Ætna Building.....Indianapolis.
Winter, Ferdinand, Majestic Building.....Indianapolis.
Wishard, Albert W., U. S. District Attorney.....Indianapolis.
Wolf, Conrad.....Kokomo.
Wood, Alphonso C.....Angola.
Wood, Sol A.....Angola.
Woods, Floyd A., Stevenson Building.....Indianapolis.
Woods, William A., U. S. Circuit Judge.....Indianapolis.
Woollen, Evans, Commercial Club Building.....Indianapolis.
Woollen, William Watson, Commercial Club Building.....Indianapolis.
Worden, Charles H.....Fort Wayne.
Yeager, Henry A.....Princeton.
Zion, Charles McCormack.....Lebanon.
Zollars, Allen.....Fort Wayne.

LIST OF MEMBERS BY CONGRESSIONAL DISTRICTS.

FIRST DISTRICT: POSEY, GIBSON, VANDERBURG, WARRICK, PIKE AND SPENCER.

Gustavus V. Menzies	Mount Vernon	Posey.
Lucius C. Embree	Princeton	Gibson.
Martin W. Fields	Princeton	Gibson.
John H. Miller	Princeton	Gibson.
Thomas R. Paxton	Princeton	Gibson.
Woodfin D. Robinson	Princeton	Gibson.
Oscar M. Welborn	Princeton	Gibson.
Henry A. Yeager	Princeton	Gibson.
John R. Brill	Evansville	Vanderburg.
De Witt Q. Chappell	Evansville	Vanderburg.
Andrew J. Clark	Evansville	Vanderburg.
George A. Cunningham	Evansville	Vanderburg.
Curran A. De Bruler	Evansville	Vanderburg.
John H. Foster	Evansville	Vanderburg.
Philip W. Frey	Evansville	Vanderburg.
Alexander Gilchrist	Evansville	Vanderburg.
John E. Iglehart	Evansville	Vanderburg.
Hiram M. Logsdon	Evansville	Vanderburg.
Hamilton A. Mattison	Evansville	Vanderburg.
Frank B. Posey	Evansville	Vanderburg.
Robert D. Richardson	Evansville	Vanderburg.
John W. Spencer	Evansville	Vanderburg.
Edwin Taylor	Evansville	Vanderburg.
James T. Walker	Evansville	Vanderburg.
Joel E. Williamson	Evansville	Vanderburg.
Edward Gough	Boonville	Warrick.
Eugene A. Ely	Petersburg	Pike.
Edward P. Richardson	Petersburg	Pike.
Arthur H. Taylor	Petersburg	Pike.
Francis J. Reinhard	Rockport	Spencer.
Elbert M. Swan	Rockport	Spencer.

SECOND DISTRICT: KNOX, SULLIVAN, DAVIESS, GREENE, OWEN, MONROE, MARTIN AND LAWRENCE.

William H. De Wolf	Vincennes	Knox.
John S. Bays	Sullivan	Sullivan.
Lee Fenton Bays	Sullivan	Sullivan.
William W. Moffett	Bloomfield	Greene.
Thomas J. Brooks	Bedford	Lawrence.
William H. Martin	Bedford	Lawrence.
Luther U. Downey	Gosport	Owen.
Inman H. Fowler	Spencer	Owen.
Walter E. Hottel	Bloomington	Monroe.
John H. Louden	Bloomington	Monroe.
Theodore J. Louden	Bloomington	Monroe.
George L. Reinhard	Bloomington	Monroe.
William P. Rogers	Bloomington	Monroe.
James B. Wilson	Bloomington	Monroe.

THIRD DISTRICT: DUBOIS, ORANGE, CRAWFORD, PERRY, WASHINGTON, HARRISON, FLOYD, CLARK AND SCOTT.

George B. Cardwill	New Albany	Floyd.
Alexander Dowling	New Albany	Floyd.
Charles L. Jewett	New Albany	Floyd.
Evan B. Stotsenberg	New Albany	Floyd.
John D. Welman	New Albany	Floyd.
Charles A. Weathers	Cannelton	Perry.
James W. Fortune	Jeffersonville	Clark.
Melchert Z. Stannard	Jeffersonville	Clark.
George H. Voight	Jeffersonville	Clark.
Ward H. Watson	Jeffersonville	Clark.
Mark Storen	Scottsburg	Scott.
John L. Bretz	Jasper	Dubois.
William A. Traylor	Jasper	Dubois.

FOURTH DISTRICT: JACKSON, BROWN, BARTHOLOMEW, JENNINGS, JOHNSON, RIPLEY, DEARBORN, OHIO, SWITZERLAND AND JEFFERSON.

Ralph Applewhite	Brownstown	Jackson.
Oscar H. Montgomery	Seymour	Jackson.
Joseph H. Shea	Seymour	Jackson.
James F. Cox	Columbus	Bartholomew.
John W. Donaker	Columbus	Bartholomew.
Francis T. Hord	Columbus	Bartholomew.
Charles F. Remy	Columbus	Bartholomew.
Simeon Stansifer	Columbus	Bartholomew.
Willard New	Vernon	Jennings.

Lincoln Dixon	North Vernon	Jennings.
Francis Marion Griffith	Vevay	Switzerland.
Lucian Harris	Vevay	Switzerland.
George S. Pleasants	Vevay	Switzerland.
Carroll S. Tandy	Vevay	Switzerland.
George E. Downey	Aurora	Dearborn.
Frank B. Shutts	Aurora	Dearborn.
Robert H. Colt	Lawrenceburg	Dearborn.
Noah S. Givan	Lawrenceburg	Dearborn.
William R. Johnston	Lawrenceburg	Dearborn.
Perry E. Bear	Madison	Jefferson.
Hiram Francisco	Madison	Jefferson.
Marcus R. Sulzer	Madison	Jefferson.

FIFTH DISTRICT: VIGO, VERMILLION, PARKE, CLAY, PUTNAM, HENDRICKS AND MORGAN.

John T. Beasley	Terre Haute	Vigo.
Adrian A. Beecher	Terre Haute	Vigo.
Sidney B. Davis	Terre Haute	Vigo.
Jacob D. Early	Terre Haute	Vigo.
Samuel R. Hamill	Terre Haute	Vigo.
David W. Henry	Terre Haute	Vigo.
Frank A. Kelley	Terre Haute	Vigo.
John E. Lamb	Terre Haute	Vigo.
Buena V. Marshall	Terre Haute	Vigo.
James E. Piety	Terre Haute	Vigo.
John O. Piety	Terre Haute	Vigo.
Silas D. Coffey	Brazil	Clay.
Fleura F. James	Newport	Vermillion.
Presley O. Colliver	Greencastle	Putnam.
Benjamin F. Corwin	Greencastle	Putnam.
Silas A. Hays	Greencastle	Putnam.
Henry C. Lewis	Greencastle	Putnam.
Henry H. Mathias	Greencastle	Putnam.
George W. Brill	Danville	Hendricks.
James M. Clark	Danville	Hendricks.
Thomas J. Cofer	Danville	Hendricks.
George C. Harvey	Danville	Hendricks.
Enoch G. Hogate	Danville	Hendricks.
George W. Grubbs	Martinsville	Morgan.
James H. Jordan	Martinsville	Morgan.
John C. McNutt	Martinsville	Morgan.
Charles G. Renner	Martinsville	Morgan.
William S. Shirley	Martinsville	Morgan.

SIXTH DISTRICT: HANCOCK, SHELBY, HENRY, RUSH, DECATUR, WAYNE, FAYETTE, UNION AND FRANKLIN.

William Ward Cook	Greenfield	Hancock.
Edward W. Felt	Greenfield	Hancock.
William R. Hough	Greenfield	Hancock.
Uriah Stokes Jackson	Greenfield	Hancock.
Ephraim Marsh	Greenfield	Hancock.
Isaac Carter	Shelbyville	Shelby.
Kendall M. Hord	Shelbyville	Shelby.
Harry C. Morrison	Shelbyville	Shelby.
Leonidas P. Newby	Knightstown	Henry.
William J. Henley	Rushville	Rush.
Charles C. Binkley.	Richmond	Wayne.
Daniel W. Comstock	Richmond	Wayne.
Richard A. Jackson	Richmond	Wayne.
Roscoe E. Kirkman	Richmond	Wayne.
Jesse S. Reeves	Richmond	Wayne.
John L. Rupe	Richmond	Wayne.
Charles E. Shively	Richmond	Wayne.
Harry C. Starr	Richmond	Wayne.
David A. Myers	Greensburg	Decatur.

SEVENTH DISTRICT: MARION.

Henry Clay Allen	Indianapolis	Marion.
Samuel Ashby	Indianapolis	Marion.
Alexander C. Ayres	Indianapolis	Marion.
Leon O. Bailey	Indianapolis	Marion.
Charles E. Barrett	Indianapolis	Marion.
Pliny W. Bartholomew	Indianapolis	Marion.
George H. Batchelor	Indianapolis	Marion.
Albert J. Beveridge	Indianapolis	Marion.
James B. Black	Indianapolis	Marion.
Frank H. Blackledge	Indianapolis	Marion.
Augustin Boice	Indianapolis	Marion.
Chester Bradford	Indianapolis	Marion.
Frank B. Burke	Indianapolis	Marion.
Noble C. Butler	Indianapolis	Marion.
Frederick W. Cady	Indianapolis	Marion.
John F. Carson	Indianapolis	Marion.
Vinson Carter	Indianapolis	Marion.
Smiley N. Chambers	Indianapolis	Marion.
John B. Cockrum	Indianapolis	Marion.
Charles F. Coffin	Indianapolis	Marion.
Linton A. Cox	Indianapolis	Marion.
Frank C. Cutter	Indianapolis	Marion.

Edward Daniels	Indianapolis	Marion.
Guilford A. Deitch	Indianapolis	Marion.
Caleb S. Denny	Indianapolis	Marion.
Henry M. Dowling	Indianapolis	Marion.
Charles A. Dryer	Indianapolis	Marion.
John S. Duncan	Indianapolis	Marion.
John T. Dye	Indianapolis	Marion.
Byron K. Elliott	Indianapolis	Marion.
Wm. F. Elliott	Indianapolis	Marion.
Rowland Evans	Indianapolis	Marion.
Louis B. Ewbank	Indianapolis	Marion.
James W. Fesler	Indianapolis	Marion.
Frank E. Gavin	Indianapolis	Marion.
John L. Griffiths	Indianapolis	Marion.
Leonard J. Hackney	Indianapolis	Marion.
Cassius C. Hadley	Indianapolis	Marion.
John V. Hadley	Indianapolis	Marion.
Levi P. Harlan	Indianapolis	Marion.
Addison C. Harris	Indianapolis	Marion.
Benjamin Harrison	Indianapolis	Marion.
Lawson M. Harvey	Indianapolis	Marion.
Aretas W. Hatch	Indianapolis	Marion.
Roscoe O. Hawkins	Indianapolis	Marion.
Wm. Pirtle Herod	Indianapolis	Marion.
Francis T. Hord	Indianapolis	Marion.
Martin M. Hugg	Indianapolis	Marion.
Ovid B. Jameson	Indianapolis	Marion.
Frederick A. Joss	Indianapolis	Marion.
Wm. P. Kappes	Indianapolis	Marion.
John W. Kern	Indianapolis	Marion.
Wm. A. Ketcham	Indianapolis	Marion.
Jesse J. M. LaFollette	Indianapolis	Marion.
Virgil H. Lockwood	Indianapolis	Marion.
Charles Martindale	Indianapolis	Marion.
Elijah B. Martindale	Indianapolis	Marion.
Augustus Lynch Mason	Indianapolis	Marion.
Frederick E. Matson	Indianapolis	Marion.
Robert W. McBride	Indianapolis	Marion.
James E. McCullough	Indianapolis	Marion.
John L. McMaster	Indianapolis	Marion.
Reuben N. Miller	Indianapolis	Marion.
William H. H. Miller	Indianapolis	Marion.
James L. Mitchell	Indianapolis	Marion.
Charles W. Moores	Indianapolis	Marion.
Merrill Moores	Indianapolis	Marion.
Nathan Morris	Indianapolis	Marion.

Frank W. Morrison	Indianapolis	Marion.
Louis Newberger	Indianapolis	Marion.
James W. Noel	Indianapolis	Marion.
Lafayette Perkins.	Indianapolis	Marion.
Samuel O. Pickens	Indianapolis	Marion.
Wm. A. Pickens	Indianapolis	Marion.
Albert Rabb	Indianapolis	Marion.
Eli F. Ritter	Indianapolis	Marion.
James A. Rohbach	Indianapolis	Marion.
Alonzo Greene Smith	Indianapolis	Marion.
Charles W. Smith	Indianapolis	Marion.
Horace E. Smith	Indianapolis	Marion.
Ambrose P. Stanton	Indianapolis	Marion.
Harold Taylor	Indianapolis	Marion.
William L. Taylor	Indianapolis	Marion.
Hiram Teter	Indianapolis	Marion.
Charles N. Thompson	Indianapolis	Marion.
William W. Thornton	Indianapolis	Marion.
Morris M. Townley	Indianapolis	Marion.
Flavius J. Van Vorhis	Indianapolis	Marion.
Lewis C. Walker	Indianapolis	Marion.
Frederick H. Wiley	Indianapolis	Marion.
David P. Williams	Indianapolis	Marion.
John G. Williams	Indianapolis	Marion.
John R. Wilson	Indianapolis	Marion.
Ferdinand Winter	Indianapolis	Marion.
Albert W. Wishard	Indianapolis	Marion.
Floyd A. Woods	Indianapolis	Marion.
William A. Woods	Indianapolis	Marion.
Evans Woollen	Indianapolis	Marion.
William Watson Woollen	Indianapolis	Marion.

EIGHTH DISTRICT: MADISON, DELAWARE, RANDOLPH, JAY, WELLS AND ADAMS.

Michael J. Clancy	Elwood	Madison.
Marcellus A. Chipman	Anderson	Madison.
William S. Diven	Anderson	Madison.
Frank P. Foster	Anderson	Madison.
Fred E. Holloway	Anderson	Madison.
Edward D. Reardon	Anderson	Madison.
James W. Sansberry	Anderson	Madison.
James Bingham	Muncie	Delaware.
Arthur W. Brady	Muncie	Delaware.
George H. Koons	Muncie	Delaware.
Orlando J. Lotz	Muncie	Delaware.

Jesse R. Long	Muncie	Delaware.
Albert O. Marsh	Winchester	Randolph.
Leander J. Monks	Winchester	Randolph.
Clark J. Lutz	Decatur	Adams.
Adelma Dragoo	Redkey	Jay.
Richard H. Hartford	Portland	Jay.
Sumner W. Haynes	Portland	Jay.
John W. Headington	Portland	Jay.
Emerson E. McGriff	Portland	Jay.
John M. Smith	Portland	Jay.
David T. Taylor	Portland	Jay.
Joseph S. Dailey	Bluffton	Wells.
William H. Eichhorn	Bluffton	Wells.
Arthur L. Sharpe	Bluffton	Wells.
Abram Simmons	Bluffton	Wells.
Nelson K. Todd	Bluffton	Wells.
Edwin C. Vaughn	Bluffton	Wells.

NINTH DISTRICT: FOUNTAIN, MONTGOMERY, BOONE, CLINTON, CARROLL, HOWARD, TIPTON AND HAMILTON.

Charles M. McCabe	Covington	Fountain.
Benjamin Crane	Crawfordsville	Montgomery.
Claude Thompson	Crawfordsville	Montgomery.
Samuel R. Artman	Lebanon	Boone.
Samuel M. Ralston	Lebanon	Boone.
Charles McCormack Zion	Lebanon	Boone.
Braden Clark	Frankfort	Clinton.
James W. Morrison	Frankfort	Clinton.
Harry C. Sheridan	Frankfort	Clinton.
John H. Gould	Delphi	Carroll.
William C. Smith	Delphi	Carroll.
Milton Bell	Kokomo	Howard.
James F. Elliott	Kokomo	Howard.
Lex J. Kirkpatrick	Kokomo	Howard.
James F. Morrison	Kokomo	Howard.
William C. Overton	Kokomo	Howard.
William C. Purdum	Kokomo	Howard.
Cassius C. Shirley	Kokomo	Howard.
Conrad Wolf	Kokomo	Howard.
Robert B. Beauchamp	Tipton	Tipton.
Edward Daniels	Tipton	Tipton.
George H. Gifford	Tipton	Tipton.
Walter W. Mount	Tipton	Tipton.
Leroy B. Nash	Tipton	Tipton.
Robert H. Proctor	Tipton	Tipton.

Dan Waugh	Tipton	Tipton.
Theodore P. Davis	Noblesville	Hamilton.
Ralph Kent Kane	Noblesville	Hamilton.
John F. Neal	Noblesville	Hamilton.

TENTH DISTRICT: WARREN, TIPPECANOE, WHITE, BENTON, NEWTON, JASPER, LAKE, PORTER AND LAPORTE.

Samuel P. Baird	Lafayette	Tippecanoe.
Charles A. Burnett	Lafayette	Tippecanoe.
Edwin P. Hammond	Lafayette	Tippecanoe.
George P. Haywood	Lafayette	Tippecanoe.
Dan W. Simms	Lafayette	Tippecanoe.
Daniel E. Storms	Lafayette	Tippecanoe.
William V. Stuart	Lafayette	Tippecanoe.
Nathan L. Agnew	Valparaiso	Porter.
Daniel E. Kelly	Valparaiso	Porter.
George C. Palmer	Monticello	White.
Truman F. Palmer	Monticello	White.
Charles C. Spencer	Monticello	White.
Frank A. Comparet	Kentland	Newton.
William Cummings	Kentland	Newton.
William Darroch	Kentland	Newton.
Albert E. Chizum	Morocco	Newton.
William B. Austin	Rensselaer	Jasper.
Frank Foltz	Rensselaer	Jasper.
John H. Gillett	Hammond	Lake.
Joseph G. Ibach	Hammond	Lake.
Daniel J. Moran	Hammond	Lake.
Virgil S. Reiter	Hammond	Lake.
John B. Peterson	Crown Point	Lake.
Jeremiah B. Collins	Michigan City	Laporte.
Henry B. Tuthill	Michigan City	Laporte.
Mortimer Nye	Laporte	Laporte.
Charles B. McAdams	Williamsport	Warren.
Ele Stansbury	Williamsport	Warren.
Ulric Z. Wiley	Fowler	Benton.

ELEVENTH DISTRICT: CASS, MIAMI, GRANT, BLACKFORD, WABASH AND HUNTINGTON.

George W. Funk	Logansport	Cass.
Rufus Magee	Logansport	Cass.
Quincy A. Myers	Logansport	Cass.
George E. Ross	Logansport	Cass.
Nathan O. Ross	Logansport	Cass.
John C. Nelson	Logansport	Cass.

Jabez T. Cox	Peru	Miami.
Milton Kraus	Peru	Miami.
John W. O'Hara	Peru	Miami.
Hiram Brownlee	Marion	Grant.
Joseph L. Custer	Marion	Grant.
Henry J. Paulus	Marion	Grant.
Oliver H. Bogue	Wabash	Wabash.
James D. Conner, Jr.	Wabash	Wabash.
Henry C. Pettit	Wabash	Wabash.
Harvey B. Shively	Wabash	Wabash.
Thomas L. Stitt	Wabash	Wabash.
Ulysses S. Lesh	Huntington	Huntington.
Henry C. Morgan	Huntington	Huntington.
Maurice L. Spencer	Huntington	Huntington.
Jay A. Hindman	Hartford City	Blackford.

TWELFTH DISTRICT: WHITLEY, ALLEN, NOBLE, DEKALB, STEUBEN AND LAGRANGE.

Andrew A. Adams	Columbia City	Whitley.
Ephraim K. Strong	Columbia City	Whitley.
Samuel R. Alden	Fort Wayne	Allen.
James M. Barrett	Fort Wayne	Allen.
William P. Breen	Fort Wayne	Allen.
Augustus A. Chapin	Fort Wayne	Allen.
William E. Clapham	Fort Wayne	Allen.
Henry Colerick	Fort Wayne	Allen.
Walpole G. Colerick	Fort Wayne	Allen.
Newton D. Doughman	Fort Wayne	Allen.
Robert B. Dreibelbiss	Fort Wayne	Allen.
Thomas E. Ellison	Fort Wayne	Allen.
Robert B. Hanna	Fort Wayne	Allen.
James B. Harper	Fort Wayne	Allen.
Owen N. Heaton	Fort Wayne	Allen.
Samuel M. Hench	Fort Wayne	Allen.
Hugh G. Keegan	Fort Wayne	Allen.
Elmer Leonard	Fort Wayne	Allen.
Wilmer Leonard	Fort Wayne	Allen.
Robert Lowry	Fort Wayne	Allen.
John Morris, Jr.	Fort Wayne	Allen.
Samuel L. Morris	Fort Wayne	Allen.
William H. Shambaugh	Fort Wayne	Allen.
Robert S. Taylor	Fort Wayne	Allen.
William T. Vesey	Fort Wayne	Allen.
Charles H. Worden	Fort Wayne	Allen.
Allen Zollars	Fort Wayne	Allen.
William L. Penfield	Auburn	DeKalb.

Frank S. Roby	Auburn	DeKalb.
James E. Rose	Auburn	DeKalb.
Emmet A. Bratton	Angola	Steuben.
Cyrus Cline	Angola	Steuben.
Newton W. Gilbert	Angola	Steuben.
Frank M. Powers	Angola	Steuben.
Alphonso C. Wood	Angola	Steuben.
Sol A. Wood	Angola	Steuben.
Otis L. Ballou	Lagrange	Lagrange.

THIRTEENTH DISTRICT: PULASKI, STARKE, ST. JOSEPH, ELKHART, MARSHALL, KOSCIUSKO AND FULTON.

Andrew Anderson	South Bend	St. Joseph.
George E. Clarke	South Bend	St. Joseph.
Frank H. Dunnahoo	South Bend	St. Joseph.
George Ford	South Bend	St. Joseph.
Walter A. Funk	South Bend	St. Joseph.
Jacob D. Henderson	South Bend	St. Joseph.
Timothy E. Howard	South Bend	St. Joseph.
Francis M. Jackson	South Bend	St. Joseph.
Francis E. Lambert	South Bend	St. Joseph.
Stuart MacKibbin	South Bend	St. Joseph.
Dudley M. Shively	South Bend	St. Joseph.
Francis E. Baker	Goshen	Elkhart.
John H. Baker	Goshen	Elkhart.
Anthony Deahl	Goshen	Elkhart.
James S. Drake	Goshen	Elkhart.
Chas. W. Miller	Goshen	Elkhart.
Perry L. Turner	Elkhart	Elkhart.
Charles P. Drummond	Plymouth	Marshall.
Samuel Parker	Plymouth	Marshall.
Lemuel W. Royse	Warsaw	Kosciusko.

LIST OF MEMBERS BY JUDICIAL CIRCUITS

FIRST CIRCUIT: VANDERBURG.

John R. Brill	Evansville.
DeWitt Q. Chappell	Evansville.
Andrew J. Clark	Evansville.
George A. Cunningham	Evansville.
Curran A. DeBruler	Evansville.
John H. Foster	Evansville.
Philip W. Frey	Evansville.
Alexander Gilchrist	Evansville.
John E. Iglehart	Evansville.
Hiram M. Logsdon	Evansville.
Hamilton A. Mattison	Evansville.
Frank B. Posey	Evansville.
Robert D. Richardson	Evansville.
John W. Spencer	Evansville.
Edwin Taylor	Evansville.
James T. Walker	Evansville.
Joel E. Williamson	Evansville.

SECOND CIRCUIT: SPENCER, PERRY AND WARRICK.

Francis J. Reinhard	Rockport.
Elbert M. Swan	Rockport.
Edward Gough	Boonville.
Charles A. Weathers	Cannelton.

THIRD CIRCUIT: HARRISON AND CRAWFORD.

FOURTH CIRCUIT: CLARK.

James W. Fortune	Jeffersonville.
Melchert Z. Stannard	Jeffersonville.
George H. Voight.	Jeffersonville.
Ward H. Watson	Jeffersonville.

FIFTH CIRCUIT: JEFFERSON AND SWITZERLAND.

Perry E. Bear	Madison.
Hiram Francisco	Madison.
Marcus R. Sulzer	Madison.

Francis Marion Griffith.....Vevay.
Lucian Harris.....Vevay.
George S. Pleasants.....Vevay.
Carroll S. Tandy.....Vevay.

SIXTH CIRCUIT: RIPLEY, JENNINGS AND SCOTT.

Lincoln Dixon.....North Vernon.
Willard New.....Vernon.
Mark Storen.....Scottsburg.

SEVENTH CIRCUIT: OHIO AND DEARBORN.

Robert H. Colt.....Lawrenceburg.
Noah S. Givan.....Lawrenceburg.
William R. Johnston.....Lawrenceburg.
George E. Downey.....Aurora.
Frank B. Shutts.....Aurora.

EIGHTH CIRCUIT: JOHNSON AND BROWN.

NINTH CIRCUIT: BARTHOLOMEW AND DECATUR.

James F. Cox.....Columbus.
John W. Donaker.....Columbus.
Francis T. Hord.....Columbus.
Charles F. Remy.....Columbus.
Simeon Stansifer.....Columbus.
David A. Myers.....Greensburg.

TENTH CIRCUIT: LAWRENCE AND MONROE.

Walter E. Hottel.....Bloomington.
John H. Louden.....Bloomington.
Theodore J. Louden.....Bloomington.
George L. Reinhard.....Bloomington.
William P. Rogers.....Bloomington.
James B. Wilson.....Bloomington.
Thomas J. Brooks.....Bedford.
William H. Martin.....Bedford.

ELEVENTH CIRCUIT: GIBSON AND POSEY.

Gustavus V. Menzies.....Mount Vernon.
Lucius C. Embree.....Princeton.
Martin W. Fields.....Princeton.
John H. Miller.....Princeton.
Thomas R. Paxton.....Princeton.
Woodfin D. Robinson.....Princeton.
Oscar M. Welborn.....Princeton.
Henry A. Yeager.....Princeton.

TWELFTH CIRCUIT: KNOX.

Wm. H. DeWolf.....Vincennes.

THIRTEENTH CIRCUIT: CLAY AND PUTNAM.

Silas D. Coffey.....Brazil.
Presley O. Colliver.....Greencastle.
Benjamin F. Corwin.....Greencastle.
Silas A. Hays.....Greencastle.
Henry C. Lewis.....Greencastle.
Henry H. Mathias.....Greencastle.

FOURTEENTH CIRCUIT: GREENE AND SULLIVAN.

John S. Bays.....Sullivan.
Lee Fenton Bays.....Sullivan.
Wm. W. Moffett.....Bloomfield.

FIFTEENTH CIRCUIT: OWEN AND MORGAN.

Luther U. Downey.....Gosport.
Inman H. Fowler.....Spencer.
George W. Grubbs.....Martinsville.
James H. Jordan.....Martinsville.
John C. McNutt.....Martinsville.
Charles G. Renner.....Martinsville.
Wm. S. Shirley.....Martinsville.

SIXTEENTH CIRCUIT: RUSH AND SHELBY.

Isaac Carter.....Shelbyville.
Kendall M. Hord.....Shelbyville.
Harry C. Morrison.....Shelbyville.
Wm. J. Henley.....Rushville.

SEVENTEENTH CIRCUIT: WAYNE.

Charles C. Binkley.....Richmond.
Daniel W. Comstock.....Richmond.
Richard A. Jackson.....Richmond.
Roscoe E. Kirkman.....Richmond.
Jesse S. Reeves.....Richmond.
John L. Rupe.....Richmond.
Charles E. Shively.....Richmond.
Harry C. Starr.....Richmond.

EIGHTEENTH CIRCUIT: HANCOCK.

William Ward Cook.....Greenfield.
Edward W. Felt.....Greenfield.
William R. Hough.....Greenfield.
Uriah Stokes Jackson.....Greenfield.
Ephraim Marsh.....Greenfield.

NINETEENTH CIRCUIT: MARION.

Henry Clay Allen	Indianapolis.
Samuel Ashby	Indianapolis.
Alexander C. Ayres	Indianapolis.
Leon O. Bailey	Indianapolis.
Charles E. Barrett	Indianapolis.
Pliny W. Bartholomew	Indianapolis.
George H. Batchelor	Indianapolis.
Albert J. Beveridge	Indianapolis.
James B. Black	Indianapolis.
Frank H. Blackledge	Indianapolis.
Augustin Boice	Indianapolis.
Chester Bradford	Indianapolis.
Frank B. Burke	Indianapolis.
Noble C. Butler	Indianapolis.
Frederick W. Cady	Indianapolis.
John F. Carson	Indianapolis.
Vinson Carter	Indianapolis.
Smiley N. Chambers	Indianapolis.
John B. Cockrum	Indianapolis.
Charles F. Coffin	Indianapolis.
Frank C. Cutter	Indianapolis.
Edward Daniels	Indianapolis.
Guilford A. Deitch	Indianapolis.
Caleb S. Denny	Indianapolis.
Henry M. Dowling	Indianapolis.
Charles A. Dryer	Indianapolis.
John S. Duncan	Indianapolis.
John T. Dye	Indianapolis.
William H. Dye	Indianapolis.
Byron K. Elliott	Indianapolis.
William F. Elliott	Indianapolis.
Rowland Evans	Indianapolis.
Louis B. Ewbank	Indianapolis.
James W. Fesler	Indianapolis.
Frank E. Gavin	Indianapolis.
John L. Griffiths	Indianapolis.
Leonard J. Hackney	Indianapolis.
Cassius C. Hadley	Indianapolis.
John V. Hadley	Indianapolis.
Levi P. Harlan	Indianapolis.
Addison C. Harris	Indianapolis.
Benjamin Harrison	Indianapolis.
Lawson M. Harvey	Indianapolis.
Aretas W. Hatch	Indianapolis.
Roscoe O. Hawkins	Indianapolis.

William Pirtle Herod.....Indianapolis.
Francis T. Hord.....Indianapolis.
Martin M. Hugg.....Indianapolis.
Ovid B. Jameson.....Indianapolis.
Frederick A. Joss.....Indianapolis.
William P. Kappes.....Indianapolis.
John W. Kern.....Indianapolis.
William A. Ketcham.....Indianapolis.
Jesse J. M. LaFollette.....Indianapolis.
Virgil H. Lockwood.....Indianapolis.
Charles Martindale.....Indianapolis.
Elijah B. Martindale.....Indianapolis.
Augustus Lynch Mason.....Indianapolis.
Frederick E. Matson.....Indianapolis.
Robert W. McBride.....Indianapolis.
James E. McCullough.....Indianapolis.
John L. McMaster.....Indianapolis.
Reuben N. Miller.....Indianapolis.
William H. H. Miller.....Indianapolis.
James L. Mitchell.....Indianapolis.
Charles W. Moores.....Indianapolis.
Merrill Moores.....Indianapolis.
Nathan Morris.....Indianapolis.
Frank W. Morrison.....Indianapolis.
Louis Newberger.....Indianapolis.
James W. Noel.....Indianapolis.
Lafayette Perkins.....Indianapolis.
Samuel O. Pickens.....Indianapolis.
William A. Pickens.....Indianapolis.
Albert Rabb.....Indianapolis.
Eli F. Ritter.....Indianapolis.
James A. Rohbach.....Indianapolis.
Alonzo G. Smith.....Indianapolis.
Charles W. Smith.....Indianapolis.
Horace E. Smith.....Indianapolis.
Ambrose P. Stanton.....Indianapolis.
Harold Taylor.....Indianapolis.
William L. Taylor.....Indianapolis.
Hiram Teter.....Indianapolis.
Charles N. Thompson.....Indianapolis.
William W. Thornton.....Indianapolis.
Morris M. Townley.....Indianapolis.
Flavius J. Van Vorhis.....Indianapolis.
Lewis C. Walker.....Indianapolis.
Frederick H. Wiley.....Indianapolis.
David P. Williams.....Indianapolis.

John G. Williams.....Indianapolis.
John R. Wilson.....Indianapolis.
Ferdinand Winter.....Indianapolis.
Albert W. Wishard.....Indianapolis.
Floyd A. Woods.....Indianapolis.
William A. Woods.....Indianapolis.
Evans Woollen.....Indianapolis.
William Watson Woollen.....Indianapolis.

TWENTIETH CIRCUIT: BOONE.

Samuel R. Artman.....Lebanon.
Samuel M. Ralston.....Lebanon.
Charles McCormack Zion.....Lebanon.

TWENTY-FIRST CIRCUIT: BENTON, WARREN AND FOUNTAIN.

Ulric Z. Wiley.....Fowler.
Charles M. McCabe.....Covington.
Charles B. McAdams.....Williamsport.
Ele Stansbury.....Williamsport.

TWENTY-SECOND CIRCUIT: MONTGOMERY.

Benjamin Crane.....Crawfordsville.
Claude Thompson.....Crawfordsville.

TWENTY-THIRD CIRCUIT: TIPPECANOE.

Samuel P. Baird.....Lafayette.
Edwin P. Hammond.....Lafayette.
Dan W. Simms.....Lafayette.
Daniel E. Storms.....Lafayette.
William V. Stuart.....Lafayette.

TWENTY-FOURTH CIRCUIT: HAMILTON.

Theodore P. Davis.....Noblesville.
Ralph Kent Kane.....Noblesville.
John F. Neal.....Noblesville.

TWENTY-FIFTH CIRCUIT: RANDOLPH.

Albert O. Marsh.....Winchester.
Leander J. Monks.....Winchester.

TWENTY-SIXTH CIRCUIT: ADAMS.

Clark J. Lutz.....Decatur.

TWENTY-SEVENTH CIRCUIT: WABASH.

Oliver H. Bogue.....Wabash.
James D. Conner, Jr.....Wabash.
Henry C. Pettit.....Wabash.
Harvey B. Shively.....Wabash.
Thomas L. Stitt.....Wabash.

TWENTY-EIGHTH CIRCUIT: WELLS AND BLACKFORD.

Jay A. Hindman	Hartford City.
Joseph S. Dailey	Bluffton.
Wm. H. Eichhorn	Bluffton.
Arthur L. Sharpe	Bluffton.
Abram Simmons	Bluffton.
Nelson K. Todd	Bluffton.
Edwin C. Vaughn	Bluffton.

TWENTY-NINTH CIRCUIT: CASS.

George W. Funk	Logansport.
Rufus Magee	Logansport.
Quincy A. Myers	Logansport.
John C. Nelson	Logansport.
George E. Ross	Logansport.
Nathan O. Ross	Logansport.

THIRTIETH CIRCUIT: JASPER AND NEWTON.

William B. Austin	Rensselaer.
Frank Foltz	Rensselaer.
Frank Comparet	Kentland.
William Cummings	Kentland.
William Darroch	Kentland.
Albert E. Chizum	Morocco.

THIRTY-FIRST CIRCUIT: LAKE AND PORTER.

Joseph G. Ibach	Hammond.
Daniel J. Moran	Hammond.
Virgil S. Reiter	Hammond.
John B. Peterson	Crown Point.
Nathan L. Agnew	Valparaiso.
Daniel E. Kelly	Valparaiso.

THIRTY-SECOND CIRCUIT: LAPORTE.

Mortimer Nye	Laporte.
Jeremiah B. Collins	Michigan City.
Henry B. Tuthill	Michigan City.

THIRTY-THIRD CIRCUIT: WHITLEY AND NOBLE.

Andrew A. Adams	Columbia City.
Ephraim K. Strong	Columbia City.

THIRTY-FOURTH CIRCUIT: LAGRANGE AND ELKHART.

Otis L. Ballou	Lagrange.
Francis E. Baker	Goshen.
John H. Baker	Goshen.
Anthony Deahl	Goshen.

James S. Drake.....Goshen.
Charles W. Miller.....Goshen.
Perry L. Turner.....Elkhart.

THIRTY-FIFTH CIRCUIT: DEKALB AND STEUBEN.

Emmet A. Bratton.....Angola.
Cyrus Cline.....Angola.
Newton W. Gilbert.....Angola.
Frank M. Powers.....Angola.
Alphonso C. Wood.....Angola.
Sol A. Wood.....Angola.
William L. Penfield.....Auburn.
Frank S. Roby.....Auburn.
James E. Rose.....Auburn.

THIRTY-SIXTH CIRCUIT: HOWARD AND TIPTON.

Milton Bell.....Kokomo.
James F. Elliott.....Kokomo.
Lex J. Kirkpatrick.....Kokomo.
James F. Morrison.....Kokomo.
William C. Overton.....Kokomo.
William C. Purdum.....Kokomo.
Cassius C. Shirley.....Kokomo.
Conrad Wolf.....Kokomo.
Robert B. Beauchamp.....Tipton.
Edward Daniels.....Tipton.
George H. Gifford.....Tipton.
Walter W. Mount.....Tipton.
Leroy B. Nash.....Tipton.
Robert H. Proctor.....Tipton.
Dan Waugh.....Tipton.

THIRTY-SEVENTH CIRCUIT: FAYETTE, UNION AND FRANKLIN.

THIRTY-EIGHTH CIRCUIT: ALLEN.

Samuel R. Alden.....Fort Wayne.
James M. Barrett.....Fort Wayne.
William P. Breen.....Fort Wayne.
Augustus A. Chapin.....Fort Wayne.
William E. Clapham.....Fort Wayne.
Henry Colerick.....Fort Wayne.
Walpole G. Colerick.....Fort Wayne.
Newton D. Doughman.....Fort Wayne.
Robert Dreibelbiss.....Fort Wayne.
Thomas E. Ellison.....Fort Wayne.
Robert B. Hanna.....Fort Wayne.
James B. Harper.....Fort Wayne.

Owen N. Heaton.....Fort Wayne.
Samuel M. Hench.....Fort Wayne.
Hugh G. Keegan.....Fort Wayne.
Elmer Leonard.....Fort Wayne.
Wilmer Leonard.....Fort Wayne.
Robert Lowry.....Fort Wayne.
John Morris, Jr.....Fort Wayne.
Samuel L. Morris.....Fort Wayne.
William H. Shambaugh.....Fort Wayne.
Robert S. Taylor.....Fort Wayne.
William J. Vesey.....Fort Wayne.
Charles H. Worden.....Fort Wayne.
Allen Zollars.....Fort Wayne.

THIRTY-NINTH CIRCUIT: WHITE AND CARROLL.

George C. Palmer.....Monticello.
Truman F. Palmer.....Monticello.
Charles C. Spencer.....Monticello.
John H. Cartwright.....Delphi.
John H. Gould.....Delphi.
William C. Smith.....Delphi.

FORTY-FIRST CIRCUIT: FULTON AND MARSHALL.

Charles P. Drummond.....Plymouth.
Samuel Parker.....Plymouth.

FORTY-SECOND CIRCUIT: JACKSON, WASHINGTON AND ORANGE.

Ralph Applewhite.....Brownstown.
Oscar H. Montgomery.....Seymour.
Joseph H. Shea.....Seymour.

FORTY-THIRD CIRCUIT: VIGO.

John T. Beasley.....Terre Haute.
Adrian A. Beecher.....Terre Haute.
Sidney B. Davis.....Terre Haute.
Jacob D. Early.....Terre Haute.
Samuel R. Hamill.....Terre Haute.
David W. Henry.....Terre Haute.
Frank A. Kelley.....Terre Haute.
John E. Lamb.....Terre Haute.
Buena V. Marshall.....Terre Haute.
James E. Piety.....Terre Haute.
John O. Piety.....Terre Haute.

FORTY-FOURTH CIRCUIT: STARKE AND PULASKI.

FORTY-FIFTH CIRCUIT: CLINTON.

Braden Clark.....Frankfort.
James W. Morrison.....Frankfort.
Harry C. Sheridan.....Frankfort.

FORTY-SIXTH CIRCUIT: DELAWARE.

James Bingham.....Muncie.
Arthur W. Brady.....Muncie.
George H. Koons.....Muncie.
Orlando J. Lotz.....Muncie.
Jesse R. Long.....Muncie.

FORTY-SEVENTH CIRCUIT: VERMILLION AND PARKE.

Fleura F. James.....Newport.

FORTY-EIGHTH CIRCUIT: GRANT.

Hiram Brownlee.....Marion.
Joseph L. Custer.....Marion.
Henry J. Paulus.....Marion.

FORTY-NINTH CIRCUIT: DAVIESS AND MARTIN.

FIFTIETH CIRCUIT: MADISON.

Michael J. Clancy.....Elwood.
Marcellus A. Chipman.....Anderson.
William S. Diven.....Anderson.
Frank P. Foster.....Anderson.
Fred E. Holloway.....Anderson.
Edward D. Reardon.....Anderson.
James W. Sansberry.....Anderson.

FIFTY-FIRST CIRCUIT: MIAMI.

Jabez T. Cox.....Peru.
Milton Kraus.....Peru.
John W. O'Hara.....Peru.

FIFTY-SECOND CIRCUIT: FLOYD.

George B. Cardwill.....New Albany.
Alexander Dowling.....New Albany.
Charles L. Jewett.....New Albany.
Evan B. Stotsenberg.....New Albany.
John D. Welman.....New Albany.

FIFTY-THIRD CIRCUIT: HENRY.

Leonidas P. Newby.....Knightstown.

FIFTY-FOURTH CIRCUIT: KOSCIUSKO.

Lemuel W. Royse.....Warsaw.

FIFTY-FIFTH CIRCUIT: HENDRICKS.

George W. Brill.....Danville.
James L. Clark.....Danville.
Thomas J. Cofer.....Danville.
George C. Harvey.....Danville.
Enoch G. Hogate.....Danville.

FIFTY-SIXTH CIRCUIT: HUNTINGTON.

Ulysses S. Lesh.....Huntington.
Henry C. Morgan.....Huntington.
Maurice L. Spencer.....Huntington.

FIFTY-SEVENTH CIRCUIT: DUBOIS AND PIKE.

John L. Bretz.....Jasper.
William A. Traylor.....Jasper.
Thomas H. Dillon.....Petersburg.
Eugene A. Ely.....Petersburg.
Edward P. Richardson.....Petersburg.
Arthur H. Taylor.....Petersburg.

FIFTY-EIGHTH CIRCUIT: JAY.

Adelma Dragoo.....Redkey.
Richard H. Hartford.....Portland.
Sumner W. Haynes.....Portland.
John W. Headington.....Portland.
Emerson E. McGriff.....Portland.
John M. Smith.....Portland.
David T. Taylor.....Portland.

SIXTIETH CIRCUIT: ST. JOSEPH.

Andrew Anderson.....South Bend.
George E. Clarke.....South Bend.
Frank H. Dunnahoo.....South Bend.
George Ford.....South Bend.
Walter A. Funk.....South Bend.
Jacob D. Henderson.....South Bend.
Timothy E. Howard.....South Bend.
Francis M. Jackson.....South Bend.
Francis E. Lambert.....South Bend.
Stuart MacKibbin.....South Bend.
Dudley M. Shively.....South Bend.

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